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# Contents

**Federal Register**

Vol. 88, No. 232

Tuesday, December 5, 2023

**Separate Parts In This Issue**



**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.

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## 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:**

10679.....84679
10680.....84681

**14 CFR**

97 (2 documents) .....84233, 84234

**17 CFR**

240.....84454

**32 CFR**

286.....84236

**33 CFR**

100.....84238
165.....84238

**Proposed Rules:**

165.....84249

**38 CFR**

21.....84239

**39 CFR**

**Proposed Rules:**

111.....84251

**40 CFR**

52 (2 documents) .....84241, 84626
704.....84242

**47 CFR**

54.....84406
64.....84406

**49 CFR**

571.....84514

**50 CFR**

648.....84243
679.....84248

**Proposed Rules:**

17.....84252
679.....84278

# Rules and Regulations

Federal Register
Vol. 88, No. 232
Tuesday, December 5, 2023



## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31520; Amdt. No. 4090]**

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective December 5, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 2023.

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

### For Examination

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

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

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

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

For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

### Availability

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

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

**SUPPLEMENTARY INFORMATION:** This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Air Missions (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

### Availability and Summary of Material Incorporated by Reference

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

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

### The Rule

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

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

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

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

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

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

Issued in Washington, DC, on November 24, 2023.

**Thomas J. Nichols,**

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

**Adoption of the Amendment**

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

*EFFECTIVE UPON PUBLICATION*

| AIRAC date | State | City | Airport name | FDC No. | FDC date | Procedure name |
|---|---|---|---|---|---|---|
| 28–Dec–23 | UT | Provo | Provo Muni | 3/1338 | 11/3/23 | ILS OR LOC RWY 13, Amdt 5. |
| 28–Dec–23 | TX | Lockhart | Lockhart Muni | 3/4048 | 11/2/23 | RNAV (GPS) RWY 18, Orig–B. |
| 28–Dec–23 | MT | Sidney | Sidney-Richland Rgnl | 3/4295 | 11/3/23 | RNAV (GPS) RWY 1, Amdt 2. |
| 28–Dec-23 | MA | Westfield/Springfield | Westfield-Barnes Rgnl | 3/9342 | 10/5/23 | ILS OR LOC RWY 20, Amdt 8C. |

[FR Doc. 2023–26628 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31519; Amdt. No. 4089]**

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective December 5, 2023. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 2023

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

**For Examination**

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

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

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

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

**Availability**

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

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

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

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, pilots do not use the regulatory

text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

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

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

**The Rule**

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

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

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

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

**Lists of Subjects in 14 CFR Part 97**

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

Issued in Washington, DC, on November 24, 2023.

**Thomas J. Nichols,**

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

**Adoption of the Amendment**

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

**Effective 28 December 2023**

Los Angeles, CA, LAX, ILS OR LOC RWY 25L, ILS RWY 25L (CAT II), ILS RWY 25L (CAT III), Amdt 15A
Mason City, IA, KMCW, RNAV (GPS) RWY 30, Amdt 1E
Mason City, IA, KMCW, RNAV (GPS) RWY 36, Amdt 1E
Springfield, IL, SPI, RNAV (GPS) RWY 4, Orig–E
Springfield, IL, KSPI, RNAV (GPS) RWY 13, Amdt 1D
Indianapolis, IN, UMP, RNAV (GPS) RWY 15, Amdt 2A
South Bend, IN, KSBN, RNAV (GPS) RWY 18, Amdt 1E
Beverly, MA, BVY, RNAV (GPS) RWY 9, Amdt 1
Beverly, MA, KBVY, RNAV (GPS) RWY 27, Amdt 1C
Luverne, MN, KLYV, RNAV (GPS) RWY 36, Orig–C
Luverne, MN, KLYV, Takeoff Minimums and Obstacle DP, Orig–A
Miles City, MT, KMLS, RNAV (GPS) RWY 4, Amdt 4A
Miles City, MT, KMLS, VOR RWY 4, Amdt 14B
Lincoln, NE, LNK, RNAV (GPS) RWY 35, Orig–B
Jackson, TN, KMKL, VOR RWY 2, Amdt 1
Bonham, TX, F00, RNAV (GPS) RWY 17, Amdt 2C
Bonham, TX, F00, RNAV (GPS) RWY 35, Amdt 1C

**Effective 25 January 2024**

Little Rock, AR, LIT, RNAV (GPS) RWY 18, Amdt 2
Colorado City, AZ, KAZC, NDB–A, Amdt 1, CANCELED
Colorado City, AZ, KAZC, NORRA (RNAV) ONE, Graphic DP
Colorado City, AZ, KAZC, Takeoff Minimums and Obstacle DP, Amdt 1
Rifle, CO, KRIL, RNAV (GPS) Y RWY 8, Amdt 2A
Valdosta, GA, VLD, ILS OR LOC RWY 36, Amdt 8
Valdosta, GA, VLD, RNAV (GPS) RWY 4, Amdt 2
Valdosta, GA, VLD, RNAV (GPS) RWY 18, Amdt 3
Valdosta, GA, VLD, RNAV (GPS) RWY 36, Amdt 2
Valdosta, GA, KVLD, Takeoff Minimums and Obstacle DP, Amdt 2A
Valdosta, GA, VLD, VOR RWY 18, Amdt 1C
Valdosta, GA, VLD, VOR RWY 36, Amdt 1C
Champaign/Urbana, IL, KCMI, ILS OR LOC RWY 32R, Amdt 14A
Champaign/Urbana, IL, CMI, NDB RWY 32R, Amdt 11B
Champaign/Urbana, IL, CMI, RNAV (GPS) RWY 22, Amdt 1C
Champaign/Urbana, IL, KCMI, VOR RWY 22, Amdt 8B
Decatur, IL, DEC, ILS OR LOC RWY 6, Amdt 15
Dixon, IL, C73, RNAV (GPS) RWY 8, Amdt 2
Dixon, IL, C73, RNAV (GPS) RWY 26, Amdt 1
Dixon, IL, C73, VOR–A, Amdt 10C, CANCELED
Litchfield, IL, 3LF, RNAV (GPS) RWY 18, Amdt 1
Litchfield, IL, 3LF, RNAV (GPS) RWY 27, Amdt 1
Litchfield, IL, 3LF, RNAV (GPS) RWY 36, Amdt 1
Bloomington, IN, BMG, VOR/DME RWY 6, Amdt 19D
Indianapolis, IN, IND, ILS OR LOC RWY 23L, ILS RWY 23L (SA CAT II), Amdt 8
Indianapolis, IN, IND, RNAV (GPS) Y RWY 23L, Amdt 5
Indianapolis, IN, IND, RNAV (RNP) Z RWY 23L, Amdt 3
Portland, IN, KPLD, RNAV (GPS) RWY 27, Amdt 2A
Lexington, KY, KLEX, ILS OR LOC RWY 4, Amdt 18

Lexington, KY, KLEX, ILS OR LOC RWY 22, Amdt 21
Lexington, KY, LEX, RNAV (GPS) RWY 4, Amdt 2
Lexington, KY, LEX, RNAV (GPS) RWY 22, Amdt 2
Maple Lake, MN, MGG, RNAV (GPS)–A, Orig
Maple Lake, MN, MGG, VOR–A, Amdt 4C, CANCELED
Helena, MT, KHLN, RNAV (RNP) Y RWY 27, Amdt 2
Helena, MT, KHLN, RNAV (RNP) Z RWY 9, Amdt 2
Helena, MT, KHLN, RNAV (RNP) Z RWY 27, Amdt 2
Hickory, NC, KHKY, HICKORY THREE, Graphic DP, CANCELED
Hickory, NC, KHKY, ILS OR LOC RWY 24, Amdt 9
Hickory, NC, KHKY, RNAV (GPS) RWY 1, Amdt 1C, CANCELED
Hickory, NC, KHKY, RNAV (GPS) RWY 6, Amdt 2
Hickory, NC, KHKY, RNAV (GPS) RWY 19, Amdt 1B, CANCELED
Hickory, NC, KHKY, RNAV (GPS) RWY 24, Amdt 2
North Platte, NE, LBF, ILS OR LOC RWY 30, Amdt 8
Eureka, NV, 05U, RNAV (GPS) RWY 18, Amdt 1
Cincinnati, OH, LUK, LOC BC RWY 3R, Amdt 9, CANCELED
Huntington, WV, KHTS, ILS OR LOC RWY 12, Amdt 17
Huntington, WV, KHTS, RNAV (GPS) RWY 12, Amdt 4

[FR Doc. 2023–26633 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 286

**[Docket ID: DOD–2019–OS–0069]**

**RIN 0790–AK54**

## DoD Freedom of Information Act (FOIA) Program; Amendment

**AGENCY:** Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (OATSD(PCLT)), Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The DoD is finalizing amendments to its Freedom of Information Act (FOIA) regulation to update organizational names, add additional FOIA Requester Service Centers, and adopt the standards in the Department of Justice's (DOJ) Template for Agency FOIA Regulations noting the decision to participate in FOIA alternative dispute resolution (ADR) services is voluntary on the part of the requester and DoD.

**DATES:** This rule is effective on January 4, 2024.

**FOR FURTHER INFORMATION CONTACT:** Toni Fuentes at 571–372–0462.

**SUPPLEMENTARY INFORMATION:**

### I. Background

According to the FOIA, 5 U.S.C. 552, an agency may, in its published administrative rules and regulations, designate those components that can receive FOIA requests. Additionally, the FOIA requires agencies to establish FOIA Public Liaisons, which are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

### II. Regulatory History

On February 6, 2018 (83 FR 5196–5197), the DoD finalized revisions to its FOIA regulation to incorporate the provisions of the Openness Promotes Effectiveness in our National Government Act of 2007 and the FOIA Improvement Act of 2016. On July 2, 2020, the DoD published a proposed rule titled *DoD Freedom of Information Act (FOIA) Program; Amendment* (85 FR 39856–39858) to update certain administrative aspects of the Department's implementation of the FOIA, including adding an additional FOIA Requester Service Center. DoD also proposed to clarify, by adopting the standards set forth in the Department of Justice's (DOJ) Template for Agency FOIA Regulations, that the decision to participate in FOIA alternative dispute resolution services is voluntary on the part of the requestor and DoD. One public comment was received, which was off-topic and not pertinent to this rule. However, in the final coordination of this rule, the Department has elected to make other administrative changes which are discussed below.

### III. Discussion of Additional Amendments Added by the Final Rule

DoD has determined that public comment is unnecessary before finalizing these amendments as they are administrative and are internal to DoD and the management of DoD's FOIA Program. Therefore, DoD did not request public comments on this final rule, even though DoD is making several additional amendments with this final rule.

In this final rule, and per Deputy Secretary of Defense Memorandum dated September 1, 2021, *Disestablishment of the Chief Management Officer, Realignment of Functions and Responsibilities, and Related Issues* [1], DoD is changing the Directorate for Oversight and Compliance to the Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (OATSD (PCLT)). Also, the Defense Security Service is being changed to Defense Counterintelligence and Security Agency, and DoD is updating its web link for DoD Component FOIA Public Liaison contact information.[2]

Under the FOIA, 5 U.S.C. 552, agencies are afforded a certain amount of discretion in administratively implementing the Act. For example, agencies can designate which of their Components are authorized to receive FOIA requests. DoD is adding United States Cyber Command (USCYBERCOM), United States Southern Command (USSOUTHCOM), and United States Space Command (USSPACECOM) as authorized FOIA Requester Service Centers. USSOUTHCOM was inadvertently omitted in the proposed rule. Since these service centers have already been implemented, DoD is seeking to align the rule with the action. DoD also seeks to update the list of those Components serviced by the Office of the Secretary of Defense (OSD) and Joint Staff FOIA Requester Service Center. DoD is also adding the United States Space Force as an authorized DoD FOIA Requester Service Center.

DoD is updating paragraph (b) of § 286.3 to remove the list of DoD subcomponents whose FOIA requests are processed by the OSD/Joint Staff requester service center. DoD is removing this list of subcomponents because it does not provide a list of subcomponents of DoD Components whose FOIA requests are processed by other requester service centers within the Department.

This rule also clarifies language concerning DoD's participation in FOIA ''Dispute Resolution,'' found in § 286.4 by adopting DOJ's Template for Agency FOIA Regulations to clarify the Department possesses the discretion to determine whether to participate in FOIA alternative dispute resolution when ADR is requested by a FOIA requester.

This rule also amends paragraph (f)(3) in § 286.9 to require a statement detailing the application of any foreseeable harm in applying FOIA

[1] *https://media.defense.gov/2021/Sep/03/2002847421/-1/-1/0/DISESTABLISHMENT-OF-THE-CMO-REALIGNMENT-OF-FUNCTIONS-AND-RESPONSIBILITIES-AND-RELATED-ISSUES.PDF.*

[2] *Osd.mc-alex.oatsd-pclt.mbx.foia-liaison@mail.mil.*

exemptions based on DOJ guidance,[3] requiring agencies to document foreseeable harm or legal bars to disclosure when processing requests, and include language that they considered the foreseeable harm standard within responses to requesters. DoD has updated this paragraph to comply with the DOJ requirement.

DoD is adding Armed Services Board of Contract Appeals to paragraph (b)(1) and removing it from paragraph (b)(2) in § 286.11. This component was inadvertently listed under paragraph (b)(2) but was granted appellate authority previously.

## IV. Impact of This Rule

*Costs*

The Department does not anticipate any costs to the public associated with these rule amendments as they are administrative in nature and impact DoD internal operations of its FOIA program. Prior to establishing their own FOIA Requester Service Center, USCYBERCOM's and USSPACECOM's FOIA requests were serviced by the United States Strategic Command (USSTRATCOM) FOIA Requester Service Center. Since FOIA requests concerning USCYBERCOM and USSPACECOM previously existed, the cost associated with processing the request is unchanged and realigned from USSTRATCOM to the new FOIA Requester Service Centers.

*Benefits*

The benefit of USCYBERCOM and USSPACECOM establishing their own FOIA Requester Service Center is that FOIA action officers would have a direct and deeper knowledge of USCYBERCOM and USSPACECOM records, allowing for requests to be more readily completed within statutory timelines.

This rule also clarifies that DoD possesses the discretion to determine whether to participate in FOIA alternative dispute resolution when ADR is requested by a FOIA requester. This clarification is necessary to ensure that FOIA requesters understand FOIA alternative dispute resolution is voluntary on the part of both parties and the Agency, as one of the parties to the mediation, may choose not to mediate a given FOIA dispute on a case-by-case basis. Furthermore, amending this language clarifies that the alternative dispute resolution process is governed by the National Archives and Records Administration, the Office of Government Information Service as mandated by the FOIA.

Adding the foreseeable harm statement helps requesters understand what standards the Department considered when processing their requests.

## V. Regulatory Compliance Analysis

*A. Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated not significant, under section 3(f) of Executive Order 12866.

*B. Congressional Review Act (5 U.S.C. 801 et seq.)*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule may take effect no earlier than 60 calendar days after Congress receives the rule report or the rule is published in the **Federal Register**, whichever is later. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*C. Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)*

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule will implement the procedures for processing FOIA requests within the DoD, which do not create such an impact. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

*D. Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''*

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532(a)) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, in any one year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

*E. Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

This rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

*F. Executive Order 13132, ''Federalism''*

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. This final rule will not have a substantial effect on State and local governments, or otherwise have federalism implications.

*G. Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''*

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or affects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

**List of Subjects in 32 CFR Part 286**

Freedom of information.

For reasons stated in the preamble, 32 CFR part 286 is amended as follows:

## PART 286—DOD FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

■ 1. The authority citation for part 286 continues to read as follows:

**Authority:** 5 U.S.C. 552.

**§ 286.1 [Amended]**

■ 2. Amend § 286.1 by removing the words ''Directorate for Oversight and

[3] *https://www.justice.gov/oip/oip-guidance-applying-presumption-openness-and-foreseeable-harm-standard.*

Compliance'' and adding in its place the words ''Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (OATSD(PCLT))''.

■ 3. Amend § 286.3 by:

■ a. In paragraph (a):

■ i. Removing the text ''*http://www.foia.gov/report-makerequest.html*'' and adding in its place the text ''*https://www.foia.gov*.''

■ ii. Removing the words ''Defense Security Service'' and adding in their place the words ''Counterintelligence and Security Agency''.

■ iii. Adding the words ''United States Cyber Command,'' after the words ''United States Central Command,''.

■ iv. Removing the words ''Pacific Command'' and adding in their place the words ''Indo-Pacific Command''.

■ v. Adding the words ''United States Southern Command, United States Space Command, and United States Space Force,'' before the words ''United States Special Operations Command''.

■ b. Revising paragraph (b).

■ c. In paragraph (c), removing ''32 CFR part 310'' and adding in its place ''32 CFR 310.3(c) through (e)''.

The revision reads as follows:

**§ 286.3 General information.**

* * * * *

(b) The OSD/Joint Staff FOIA RSC also processes FOIA requests for several DoD agencies and field activities, as well as other DoD organizations. A list of these agencies, field activities, and DoD organizations is available at *https://www.esd.whs.mil/FOID/Submit-Request/*.

* * * * *

■ 4. Amend § 286.4 by:

■ a. In paragraph (a), removing the text ''*http://www.foia.gov/report-makerequest.html*'' and adding in its place the text ''*https://www.foia.gov*.''

■ b. Revising paragraph (b).

The revision reads as follows:

**§ 286.4 FOIA Public Liaisons and the Office of Government Information Services.**

* * * * *

(b) Engaging in dispute resolution services provided by the Office of Government Information Services (OGIS). These dispute resolution processes are voluntary processes. If a DoD Component agrees to participate in dispute resolution services provided by the OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

■ 5. Amend § 286.9 by:

■ a. Revising paragraph (f)(2).

■ b. In paragraph (h)(1), removing the words ''Directorate for Oversight and Compliance'' and adding in their place the acronym ''OATSD(PCLT)''.

The revision reads as follows:

**§ 286.9 Responses to requests.**

* * * * *

(f) * * *

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied and a statement detailing the application of any foreseeable harm in applying FOIA exemptions by the DoD Component in denying the request;

* * * * *

**§ 286.11 [Amended]**

■ 6. Amend § 286.11 by:

■ a. In paragraph (b)(1):

■ i. Adding the words ''Armed Services Board of Contract Appeals,'' after the words ''appellate authority:''.

■ ii. Removing the words ''Defense Security Service'' and adding in their place the words ''Defense Counterintelligence and Security Agency''.

■ b. In paragraph (b)(2):

■ i. Removing the words ''Deputy Chief Management Officer (DCMO)'' and adding in their place the words ''Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (ATSD(PCLT))''.

■ ii. Removing the words ''Armed Services of Contract Appeals''.

■ iii. Adding the words ''United States Cyber Command,'' after the words ''United States Central Command,''.

■ iv. Removing the words ''Pacific Command'' and adding in their place the words ''Indo-Pacific Command''.

■ v. Adding the words ''United States Southern Command,'' before the words ''United States Special Operations Command''.

■ vi. Adding the words ''United States Space Command,'' before the words ''United States Strategic Command''.

■ vii. Removing the acronym ''DCMO'' and adding in its place the acronym ''ATSD(PCLT)'' wherever it appears in the last sentence.

Dated: November 27, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023–26392 Filed 12–4–23; 8:45 am]

**BILLING CODE 6001–FR–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Parts 100 and 165

**[USCG–2023–0590]**

## 2023 Quarterly Listings; Safety Zones, Security Zones, and Special Local Regulations

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of expired temporary rules issued.

**SUMMARY:** This document provides notification of substantive rules issued by the Coast Guard that were made temporarily effective but expired before they could be published in the **Federal Register**. This document lists temporary safety zones, security zones, and special local regulations, all of limited duration and for which timely publication in the **Federal Register** was not possible. This document also announces notifications of enforcement for existing reoccurring regulations that we issued but were unable to be published before the enforcement period ended.

**DATES:** This document lists temporary Coast Guard rules and notifications of enforcement that became effective, primarily between April 2023 and June 2023, and expired before they could be published in the **Federal Register**.

**ADDRESSES:** Temporary rules listed in this document may be viewed online, under their respective docket numbers, using the Federal eRulemaking Portal at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** For questions on this document contact Yeoman First Class Glenn Grayer, Office of Regulations and Administrative Law, telephone (202) 372–3862.

**SUPPLEMENTARY INFORMATION:** Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events.

Timely publication of these rules in the **Federal Register** may be precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, often informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Timely publication of notifications of enforcement of reoccurring regulations may be precluded when the event occurs with short notice or other agency procedural restraints.

Because **Federal Register** publication was not possible before the end of the effective period, mariners would have been personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. In some of our reoccurring regulations, we say we will publish a notice of enforcement as one of the means of notifying the public. We use this notification to announce those notifications of enforcement that we issued and will post them to their dockets.

The following unpublished rules were placed in effect temporarily during the period between April 2023 and June 2023. To view copies of these rules, visit *www.regulations.gov* and search by the docket number indicated in the following table.

| Docket No. | Type of regulation | Location | Enforcement date |
|---|---|---|---|
| USCG–2023–0304 | Safety Zones (Parts 147 and 165) | Tampa, FL | 4/6/2023 |
| USCG–2022–0726 | Safety Zones (Parts 147 and 165) | Tacoma, WA | 4/9/2023 |
| USCG–2023–0228 | Special Local Regulations (Part 100) | Charleston, SC | 4/20/2023 |
| USCG–2023–0003 | Safety Zones (Parts 147 and 165) | San Francisco, CA | 4/22/2023 |
| USCG–2023–0362 | Safety Zones (Parts 147 and 165) | Tarpon Springs, FL | 4/26/2023 |
| USCG–2023–0307 | Safety Zones (Parts 147 and 165) | Erie, PA | 4/27/2023 |
| USCG–2023–0267 | Safety Zones (Parts 147 and 165) | St. Thomas, USVI | 4/29/2023 |
| USCG–2023–0405 | Security Zones (Part 165) | Philadelphia, PA | 5/15/2023 |
| USCG–2023–0433 | Safety Zones (Parts 147 and 165) | San Pedro Bay, CA | 5/18/2023 |
| USCG–2023–0404 | Safety Zones (Parts 147 and 165) | Pittsburgh, PA | 5/25/2023 |
| USCG–2023–0414 | Safety Zones (Parts 147 and 165) | Lake Charles, LA | 5/26/2023 |
| USCG–2023–0439 | Safety Zones (Parts 147 and 165) | Lake Ozark, MO | 6/3/2023 |
| USCG–2023–0342 | Safety Zones (Parts 147 and 165) | Sturgeon Bay, WI | 6/3/2023 |
| USCG–2023–0021 | Safety Zones (Parts 147 and 165) | Greene County, PA | 6/8/2023 |
| USCG–2023–0480 | Safety Zones (Parts 147 and 165) | Charleston, SC | 6/12/2023 |
| USCG–2023–0505 | Security Zones (Part 165) | San Francisco, CA | 6/13/2023 |
| USCG–2023–0484 | Safety Zones (Parts 147 and 165) | Chicago, IL | 6/15/2023 |
| USCG–2023–0525 | Security Zones (Part 165) | San Francisco, CA | 6/19/2023 |
| USCG–2023–0537 | Safety Zones (Parts 147 and 165) | Santa Barbra Channel, CA | 6/20/2023 |
| USCG–2023–0422 | Safety Zones (Parts 147 and 165) | Clear Creek, TX | 6/23/2023 |

**Michael Cunningham,**

*Chief, Office of Regulations and Administrative Law.*

[FR Doc. 2023–26537 Filed 12–4–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AR90**

## VA Veteran Readiness and Employment Program: Removal of Regulation Regarding Repayment of Training and Rehabilitation Supplies

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is removing a regulation that addresses the circumstances under which a Veteran is to repay the value of training and rehabilitation supplies and the exceptions where repayment is not required. A prior version of the regulation's authorizing statute contained a provision that permitted VA to require the return or repayment of books, supplies, or equipment if a Veteran failed to complete a course of vocational rehabilitation due to fault on their part. However, because the authorizing statute no longer contains that provision, and because there is no statutory authority allowing VA to require reimbursement of books, supplies, or equipment under any circumstance where a Veteran fails to complete a course of vocational rehabilitation, VA is removing the governing regulation.

**DATES:** This final rule is effective December 5, 2023.

**FOR FURTHER INFORMATION CONTACT:** Loraine Spangler, Policy Analyst, Veteran Readiness and Employment Service (28), 810 Vermont Ave. NW, Washington, DC 20420; *Loraine.Spangler@va.gov;* (202) 461–9600 (this is not a toll-free telephone number).

**SUPPLEMENTARY INFORMATION:** The purpose of this rulemaking is to remove 38 CFR 21.222 (''Release of, and repayment for, training and rehabilitation supplies'') because it is no longer supported by statutory authority.

Section 21.222 sets forth the circumstances under which a Veteran is to repay the value of training and rehabilitation supplies when the Veteran fails to complete a rehabilitation program as planned. Section 21.222 also lists numerous exceptions where VA will not require reimbursement from the Veteran, including when the failure to complete the program is not the Veteran's fault.

A prior version of the regulation's authorizing statute provided that ''[a]ny

books, supplies, or equipment furnished a veteran under this chapter shall be deemed released to the veteran, except that if, because of fault on the veteran's part, the veteran fails to complete the course of vocational rehabilitation, the veteran may be requir[]ed by the Administrator to return any or all of such books, supplies, or equipment not actually expended, or to repay the reasonable value thereof.'' 38 U.S.C. 1509(a) (1976). However, Congress subsequently removed that provision from the authorizing statute. The current statute provides, in pertinent part, that the Secretary may provide ''[v]ocational and other training services and assistance, including individualized tutorial assistance, tuition, fees, books, supplies, handling charges, licensing fees, and equipment and other training materials determined by the Secretary to be necessary to accomplish the purposes of the rehabilitation program in the individual case.'' 38 U.S.C. 3104(a)(7)(A). There is no longer a statutory provision that permits VA to require the return or repayment of books, supplies, or equipment when a Veteran fails to complete a course of vocational rehabilitation because of fault on the Veteran's part.

Accordingly, VA is removing 38 CFR 21.222, the regulation that addresses the circumstances under which a Veteran is to repay the value of training and rehabilitation supplies and the exceptions where repayment is not required. VA is removing § 21.222 in its entirety. The regulation's enumerated exceptions under which a Veteran is not required to repay the value of supplies are moot because there is no longer a statutory authority that permits VA to require the return or repayment of books, supplies, or equipment under any circumstance where a Veteran fails to complete a course of vocational rehabilitation.

Although 38 U.S.C. 3104 does not authorize VA to require the return or repayment of books, supplies, or equipment when a Veteran fails to complete a course of vocational rehabilitation, controls are in place to protect the integrity of the VR&E program and guard against fraud, waste, and abuse.

To conform with the removal of 38 CFR 21.222, VA is also revising 38 CFR 21.212(b) and 38 CFR 21.224 to remove their references to 38 CFR 21.222.

**Administrative Procedure Act**

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) and (d) to publish this final rule without prior opportunity for public comment and with immediate effect. There is no longer a statutory authority that permits VA to require the return or repayment of books, supplies, or equipment under any circumstance where a Veteran fails to complete a course of vocational rehabilitation. VA thus finds that prior opportunity for public comment is unnecessary under 5 U.S.C. 553(b)(B). For the same reason, VA concludes that there is good cause not to delay the effective date of the final rule under 5 U.S.C. 553(d)(3).

**Paperwork Reduction Act**

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Executive Orders 12866, 13563 and 14094**

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Orders 12866 and 13563. The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

**Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

**List of Subjects in 38 CFR Part 21**

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs—education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, signed and approved this document on November 27, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 21 as set forth below:

## PART 21—VETERAN READINESS AND EMPLOYMENT AND EDUCATION

### Subpart A—Veteran Readiness and Employment

■ 1. The authority citation for part 21, subpart A, continues to read as follows:

**Authority:** 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

**§ 21.212 [Amended]**

■ 2. Amend § 21.212 in paragraph (b) by removing ''21.222'' and adding in its place ''21.220''.

**§ 21.222 [Removed]**

■ 3. Remove § 21.222.

**§ 21.224 [Amended]**

■ 4. Amend § 21.224 by removing ''21.222'' and adding in its place ''21.220''.

[FR Doc. 2023–26625 Filed 12–4–23; 8:45 am]

**BILLING CODE 8320–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2022–0442; FRL–10601–02–R5]**

## Air Plan Approval; Ohio; Volatile Organic Compounds

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving into the Ohio State Implementation Plan (SIP) a source-specific volatile organic compound (VOC) limit, excluding water and exempt solvents, for the applicable process lines at Forest City Technologies, Plant 4, in Wellington, Ohio as contained in the June 23, 2020, operating permit issued by the Ohio Environmental Protection Agency. On August 14, 2023, EPA proposed to approve this action and received no adverse comments.

**DATES:** This final rule is effective on January 4, 2024.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2022–0442. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility 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. We recommend that you telephone Anthony Maietta, at (312) 353–8777 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Anthony Maietta, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

### I. Background Information

On August 14, 2023 (88 FR 54996), EPA proposed to approve the addition of paragraphs C.1.b)(1)e., C.1.d)(3), C.1.e)(1)c., C.1.f)(1)d., C.2.b)(1)e., C.2.d)(4), C.2.e)(3)b., and C.2.f)(1)d. as listed in the June 23, 2020, operating permit for Forest City Technologies into Ohio's SIP. An explanation of the Clean Air Act (CAA) requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on September 13, 2023. EPA received two supportive comments from citizens. EPA also received one comment on the proposal that discussed border protection and vehicular incidents on roadways. All the comments received are included in the docket for this action.

We do not consider the border protection and vehicular incident comment to be germane or relevant to this action and therefore not adverse to this action. The comment lacks the required specificity to the proposed SIP revision and the relevant requirements of CAA section 110. Moreover, the comment does not address a specific regulation or provision in question or recommend a different action on the SIP submission from what EPA proposed. Therefore, we are finalizing our action as proposed.

### II. Final Action

EPA is approving into Ohio's SIP the addition of paragraphs C.1.b)(1)e., C.1.d)(3), C.1.e)(1)c., C.1.f)(1)d., C.2.b)(1)e., C.2.d)(4), C.2.e)(3)b., and C.2.f)(1)d. as listed in the Permit-to-Install and Operate, Number P0127984, issued to Forest City Technologies, Plant 4 on June 23, 2020.

### III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the permit for Forest City Technologies, Plant 4, which regulates operations at the plant, as described in section II of this preamble and set forth in the amendments to 40 CFR part 52 below. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

### IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 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

[1] 62 FR 27968 (May 22, 1997).

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, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term ''fair treatment'' to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The Ohio Environmental Protection Agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: November 21, 2023.

**Debra Shore,**

*Regional Administrator, Region 5.*

For the reasons stated in the preamble, title 40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1870, the table in paragraph (d) is amended by adding an entry for ''Forest City Technologies, Plant 4'' before the entry for ''Globe Metallurgical Inc.'' to read as follows:

**§ 52.1870 Identification of plan.**

* * * * *

(d) * * *

EPA-APPROVED OHIO SOURCE-SPECIFIC PROVISIONS

| Name of source | Number | Ohio effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| Forest City Technologies, Plant 4. | P0127984 | 6/23/2020 | 12/5/2023, [INSERT **FEDERAL REGISTER** CITATION]. | Only paragraphs C.1.b)(1)e., C.1.d)(3), C.1.e)(1)c., C.1.f)(1)d., C.2.b)(1)e., C.2.d)(4), C.2.e)(3)b., and C.2.f)(1)d. |
| * | * | * | * | * |

* * * * *

[FR Doc. 2023–26489 Filed 12–4–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 704

**[EPA–HQ–OPPT–2021–0357; FRL–8632–01–OCSPP]**

**RIN 2070–AK99**

## Asbestos; Reporting and Recordkeeping Requirements Under the Toxic Substances Control Act (TSCA)

*Correction*

In Rule document, 2023–14405, appearing on pages 47782 through 47806, in the issue of Tuesday, July 25, 2023, make the following correction:

**§ 704.180 Asbestos [Corrected]**

■ On page 47805, in the 3rd column, paragraph (h)(1)(ii)(B) should be corrected to read as follows:

''For chemical identities and bulk material forms required by §§ 704.180(e)(4)(iii)(A), (iv)(A), (iv)(B)(*3*), (v)(B)(*1*), (vi)(B)(*1*), and (vii)(B)(*2*);''

[FR Doc. C1–2023–14405 Filed 12–4–23; 8:45 am]

**BILLING CODE 0099–10–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 231129–0282; RTID 0648–XD485]**

## Adjustment to Sector Annual Catch Entitlements Under the Northeast Multispecies Fishery Management Plan

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

**ACTION:** Temporary final rule; adjustment to specifications.

**SUMMARY:** This final rule announces allocation carryover from fishing year 2022 into fishing year 2023 for the Northeast Multispecies sectors program. This action is necessary to distribute carryover quota to sectors. The carryover adjustments in this rule are routine and formulaic, and industry expects them each year.

**DATES:** Effective January 4, 2024, through April 30, 2024.

**FOR FURTHER INFORMATION CONTACT:** Liz Sullivan, Fishery Policy Analyst, (978) 282–8493.

**SUPPLEMENTARY INFORMATION:** On August 18, 2023, NMFS published a final rule approving Framework Adjustment 65 to the Northeast Multispecies Fishery Management Plan (FMP) (88 FR 56527), which revised the rebuilding plan for Gulf of Maine cod, set annual catch limits (ACL) for 16 of the 20 groundfish stocks and 2023 ACLs for 3 shared U.S./Canada stocks, and made a temporary modification to the accountability measures for Georges Bank cod. This rule distributes unused sector quota carried over from fishing year 2022 to fishing year 2023.

### Sector Carryover Allocations From Fishing Year 2022

Carryover regulations at 50 CFR 648.87(b)(1)(i)(C) allow each groundfish sector to carry over an amount of unused annual catch entitlement (ACE) up to 10 percent of the sector's original ACE for each stock (except for Georges Bank (GB) yellowtail flounder) that is unused at the end of the fishing year into the following fishing year. NMFS is required to adjust ACE carryover to ensure that the total unused ACE combined with the overall sub-ACL does not exceed the acceptable biological catch (ABC) for the fishing year in which the carryover may be harvested. NMFS completed the 2022 fishing year data reconciliation with sectors and determined final 2022 fishing year sector catch and the amount of allocation that sectors may carry over from the 2022 to the 2023 fishing year. Accordingly, the available carryover of unused ACE from fishing year 2022 to fishing year 2023 has been reduced for the following stocks: GB cod; GB haddock; Gulf of Maine (GOM) haddock; Cape Cod/GOM yellowtail flounder; witch flounder; GB winter flounder; Southern New England/Mid-Atlantic (SNE/MA) winter flounder; redfish; white hake; and pollock. The stocks for which carryover is the full 10 percent of the original quota allocation from fishing year 2022 are GOM cod, SNE/MA yellowtail flounder, plaice, and GOM winter flounder. Complete details on carryover reduction percentages can be found at: *https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/groundfish_catch_accounting.*

Table 1 includes the maximum amount of allocation that sectors may carry over from the 2022 to the 2023 fishing year. Table 2 includes the *de minimis* amount of carryover for each sector for the 2023 fishing year. If the overall ACL for any allocated stock is exceeded for the 2023 fishing year, the allowed carryover harvested by a sector, minus the pounds in the sector's *de minimis* amount, will be counted against its allocation to determine whether an overage subject to an accountability measure occurred. Tables 3 and 4 list the final ACE available to sectors for the 2023 fishing year, including finalized carryover amounts for each sector, as adjusted down when necessary to equal each stock's ABC.

BILLING CODE 3510–22–P

**Table 1 -- Finalized Carryover ACE from Fishing Year 2022 to Fishing Year 2023 (lb)**

| Sector | GB Cod East | GB Cod West | GOM Cod | GB Haddock East | GB Haddock West | GOM Haddock | GB Yellowtail Flounder | SNE/MA Yellowtail Flounder | CC/GOM Yellowtail Flounder | Plaice | Witch Flounder | GB Winter Flounder | GOM Winter Flounder | SNE/MA Winter Flounder | Redfish | White Hake | Pollock |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FGS | 0 | 5,375 | 417 | 0 | 20,944 | 259 | 0 | 7 | 2,138 | 2,916 | 1,514 | 24 | 4,976 | 592 | 6,011 | 27 | 48,653 |
| MCCS | 0 | 1,002 | 9,498 | 0 | 41,080 | 17,594 | 0 | 84 | 8,029 | 90,193 | 16,987 | 917 | 4,933 | 1,094 | 99,870 | 365 | 197,929 |
| MOON | 0 | 5,578 | 3,013 | 0 | 51,761 | 5,291 | 0 | 30 | 3,779 | 4,981 | 2,500 | 1,163 | 1,765 | 1,477 | 53,185 | 282 | 165,061 |
| NEFS 2 | 0 | 2,982 | 14,232 | 0 | 142,736 | 29,549 | 0 | 42 | 28,430 | 55,488 | 17,803 | 3,936 | 13,443 | 2,449 | 167,020 | 121 | 215,813 |
| NEFS 4 | 0 | 1,990 | 6,644 | 0 | 78,611 | 12,732 | 0 | 78 | 8,015 | 55,244 | 12,217 | 852 | 4,607 | 599 | 74,790 | 103 | 107,635 |
| NEFS 5 | 0 | 221 | 192 | 0 | 10,908 | 163 | 0 | 607 | 1,189 | 2,530 | 851 | 525 | 523 | 6,235 | 205 | 2 | 705 |
| NEFS 6 | 0 | 1,452 | 1,741 | 0 | 48,462 | 6,307 | 0 | 177 | 5,250 | 26,424 | 8,285 | 2,120 | 2,946 | 1,152 | 76,336 | 57 | 57,457 |
| NEFS 8 | 0 | 4,705 | 1,487 | 0 | 131,910 | 8,130 | 0 | 261 | 8,715 | 45,372 | 9,133 | 36,938 | 2,460 | 6,150 | 63,633 | 126 | 65,395 |
| NEFS 10 | 0 | 246 | 1,556 | 0 | 2,388 | 1,907 | 0 | 20 | 5,570 | 7,071 | 2,926 | 13 | 5,843 | 367 | 3,774 | 17 | 12,105 |
| NEFS 11 | 0 | 184 | 6,753 | 0 | 468 | 3,994 | 0 | 0 | 2,859 | 9,072 | 2,145 | 3 | 1,241 | 13 | 21,050 | 84 | 137,466 |
| NEFS 12 | 0 | 293 | 1,606 | 0 | 1,267 | 1,563 | 0 | 1 | 6,534 | 4,563 | 860 | 0 | 6,380 | 156 | 2,554 | 7 | 12,199 |
| NEFS 13 | 0 | 4,322 | 383 | 0 | 287,161 | 1,296 | 0 | 830 | 8,063 | 49,654 | 12,473 | 23,877 | 1,104 | 10,526 | 49,298 | 59 | 42,043 |
| SHS1 | 0 | 3,424 | 2,831 | 0 | 129,067 | 18,952 | 0 | 66 | 6,142 | 80,413 | 16,651 | 14,156 | 2,092 | 3,479 | 155,021 | 371 | 159,850 |
| SHS2 | 0 | 2,242 | 898 | 0 | 28,922 | 2,063 | 0 | 157 | 7,094 | 14,522 | 3,088 | 3,829 | 2,596 | 3,997 | 12,484 | 44 | 22,747 |
| SHS3 | 0 | 7,864 | 3,974 | 0 | 347,081 | 29,083 | 0 | 287 | 12,826 | 108,847 | 24,835 | 24,072 | 1,926 | 12,413 | 312,663 | 534 | 278,330 |
| Total | 0 | 41,880 | 55,225 | 0 | 1,322,766 | 138,883 | 0 | 2,647 | 114,633 | 557,290 | 132,268 | 112,425 | 56,835 | 50,699 | 1,097,894 | 2,199 | 1,523,388 |

Georges Bank Cod Fixed Gear Sector (FGS), Maine Coast Community Sector (MCCS), Mooncusser Sector (MOON), Maine Permit Bank (MPB), New Hampshire Permit Bank (NHPB), Northeast Fishery Sectors (NEFS), and Sustainable Harvest Sector (SHS).

**Table 2 -- *De Minimis* Carryover ACE from Fishing Year 2022 to Fishing Year 2023 (lb)**

| Sector | GB Cod East | GB Cod West | GOM Cod | GB Haddock East | GB Haddock West | GOM Haddock | GB Yellowtail Flounder | SNE/MA Yellowtail Flounder | CC/GOM Yellowtail Flounder | Plaice | Witch Flounder | GB Winter Flounder | GOM Winter Flounder | SNE/MA Winter Flounder | Redfish | White Hake | Pollock |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FGS | 0 | 957 | 39 | 0 | 3,804 | 62 | 0 | 1 | 341 | 510 | 270 | 7 | 236 | 95 | 1,116 | 27 | 8,970 |
| MCCS | 0 | 187 | 967 | 0 | 8,302 | 4,236 | 0 | 19 | 1,357 | 18,404 | 3,108 | 291 | 1,053 | 217 | 19,219 | 365 | 36,637 |
| MOON | 0 | 1,009 | 390 | 0 | 9,584 | 1,313 | 0 | 6 | 659 | 1,079 | 463 | 343 | 382 | 246 | 10,256 | 282 | 31,988 |
| NEFS 2 | 0 | 531 | 1,471 | 0 | 25,921 | 7,123 | 0 | 9 | 4,974 | 11,306 | 3,244 | 1,160 | 2,940 | 401 | 31,133 | 121 | 39,851 |
| NEFS 4 | 0 | 615 | 685 | 0 | 14,276 | 3,069 | 0 | 17 | 1,394 | 11,152 | 2,228 | 251 | 994 | 98 | 13,875 | 103 | 19,844 |
| NEFS 5 | 0 | 39 | 20 | 0 | 1,694 | 39 | 0 | 117 | 201 | 366 | 128 | 116 | 113 | 974 | 27 | 2 | 217 |
| NEFS 6 | 0 | 244 | 167 | 0 | 8,384 | 1,519 | 0 | 36 | 840 | 5,170 | 1,470 | 413 | 592 | 182 | 14,219 | 57 | 10,597 |
| NEFS 8 | 0 | 1,278 | 167 | 0 | 34,762 | 2,468 | 0 | 84 | 1,929 | 11,935 | 2,195 | 13,722 | 563 | 1,584 | 15,965 | 126 | 17,585 |
| NEFS 10 | 0 | 44 | 153 | 0 | 434 | 459 | 0 | 4 | 900 | 1,421 | 537 | 4 | 1,220 | 60 | 704 | 17 | 2,235 |
| NEFS 11 | 0 | 33 | 696 | 0 | 83 | 948 | 0 | 0 | 497 | 1,788 | 390 | 0 | 268 | 2 | 3,902 | 84 | 25,363 |
| NEFS 12 | 0 | 41 | 185 | 0 | 229 | 372 | 0 | 0 | 1,822 | 941 | 158 | 0 | 1,365 | 26 | 476 | 7 | 2,053 |
| NEFS 13 | 0 | 1,027 | 40 | 0 | 49,733 | 314 | 0 | 169 | 1,408 | 10,148 | 2,227 | 6,941 | 243 | 1,695 | 9,082 | 59 | 7,745 |
| SHS1 | 0 | 560 | 364 | 0 | 23,558 | 4,388 | 0 | 19 | 784 | 19,857 | 3,489 | 3,708 | 393 | 437 | 37,103 | 371 | 30,039 |
| SHS2 | 0 | 211 | 117 | 0 | 7,056 | 1,527 | 0 | 20 | 1,155 | 4,194 | 850 | 977 | 621 | 496 | 9,558 | 44 | 8,901 |
| SHS3 | 0 | 1,242 | 295 | 0 | 50,820 | 5,651 | 0 | 57 | 2,185 | 15,173 | 3,406 | 7,001 | 392 | 2,026 | 38,168 | 534 | 39,376 |
| Total | 0 | 8,018 | 5,756 | 0 | 238,640 | 33,488 | 0 | 558 | 20,446 | 113,444 | 24,163 | 34,934 | 11,375 | 8,539 | 204,803 | 2,199 | 281,401 |

**Table 3 -- Total ACE Available to Sectors in Fishing Year 2023 including Final Carryover (mt)**

| Sector | GB Cod East | GB Cod West | GOM Cod | GB Haddock East | GB Haddock West | GOM Haddock | GB Yellowtail Flounder | SNE/MA Yellowtail Flounder | CC/GOM Yellowtail Flounder | Plaice | Witch Flounder | GB Winter Flounder | GOM Winter Flounder | SNE/MA Winter Flounder | Redfish | White Hake | Pollock |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FGS | 16 | 30 | 2 | 24 | 158 | 3 | 0 | 0 | 16 | 24 | 13 | 0 | 13 | 5 | 53 | 19 | 429 |
| MCCS | 3 | 6 | 48 | 52 | 344 | 200 | 2 | 1 | 65 | 876 | 149 | 14 | 50 | 10 | 917 | 253 | 1,752 |
| MOON | 16 | 32 | 19 | 60 | 399 | 62 | 1 | 0 | 32 | 51 | 22 | 16 | 18 | 12 | 489 | 204 | 1,526 |
| MPB | 0 | 0 | 3 | 1 | 4 | 18 | 0 | 0 | 3 | 63 | 8 | 0 | 3 | 0 | 78 | 30 | 223 |
| NEFS 2 | 9 | 17 | 73 | 161 | 1,079 | 337 | 1 | 0 | 238 | 538 | 155 | 54 | 139 | 19 | 1,488 | 149 | 1,905 |
| NEFS 4 | 10 | 19 | 34 | 89 | 594 | 145 | 2 | 1 | 67 | 531 | 107 | 12 | 47 | 5 | 663 | 151 | 949 |
| NEFS 5 | 1 | 1 | 1 | 11 | 71 | 2 | 1 | 6 | 10 | 18 | 6 | 5 | 5 | 47 | 1 | 1 | 10 |
| NEFS 6 | 4 | 8 | 8 | 52 | 350 | 72 | 2 | 2 | 40 | 246 | 70 | 20 | 28 | 9 | 680 | 83 | 507 |
| NEFS 8 | 21 | 39 | 8 | 216 | 1,420 | 116 | 23 | 4 | 91 | 562 | 104 | 639 | 27 | 75 | 753 | 120 | 827 |
| NEFS 10 | 1 | 1 | 8 | 3 | 18 | 22 | 0 | 0 | 43 | 68 | 26 | 0 | 58 | 3 | 34 | 12 | 107 |
| NEFS 11 | 1 | 1 | 35 | 1 | 3 | 45 | 0 | 0 | 24 | 85 | 19 | 0 | 13 | 0 | 187 | 73 | 1,213 |
| NEFS 12 | 1 | 1 | 9 | 1 | 10 | 18 | 0 | 0 | 86 | 45 | 8 | 0 | 65 | 1 | 23 | 5 | 99 |
| NEFS 13 | 17 | 32 | 2 | 309 | 2,077 | 15 | 30 | 8 | 68 | 483 | 107 | 326 | 12 | 82 | 434 | 40 | 370 |
| NHPB | 0 | 0 | 3 | 0 | 0 | 1 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 2 | 1 | 15 |
| SHS 1 | 9 | 18 | 18 | 147 | 981 | 208 | 4 | 1 | 38 | 937 | 166 | 175 | 19 | 21 | 1,753 | 332 | 1,435 |
| SHS 2 | 3 | 7 | 6 | 44 | 289 | 70 | 2 | 1 | 56 | 197 | 40 | 46 | 29 | 24 | 439 | 63 | 414 |
| SHS 3 | 20 | 40 | 15 | 316 | 2,146 | 270 | 12 | 3 | 105 | 738 | 166 | 328 | 19 | 98 | 1,873 | 271 | 1,912 |
| Total | 131 | 252 | 293 | 1,486 | 9,944 | 1,600 | 80 | 27 | 983 | 5,463 | 1,164 | 1,636 | 545 | 410 | 9,867 | 1,809 | 13,692 |

**Table 4 -- Total ACE Available to Sectors in Fishing Year 2023 including Final Carryover (1,000 lb)**

| Sector | GB Cod East | GB Cod West | GOM Cod | GB Haddock East | GB Haddock West | GOM Haddock | GB Yellowtail Flounder | SNE/MA Yellowtail Flounder | CC/GOM Yellowtail Flounder | Plaice | Witch Flounder | GB Winter Flounder | GOM Winter Flounder | SNE/MA Winter Flounder | Redfish | White Hake | Pollock |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FGS | 34 | 67 | 4 | 52 | 349 | 6 | 0 | 0 | 36 | 54 | 29 | 1 | 29 | 10 | 118 | 41 | 946 |
| MCCS | 7 | 13 | 106 | 114 | 757 | 441 | 4 | 2 | 144 | 1,931 | 328 | 30 | 110 | 23 | 2,022 | 557 | 3,862 |
| MOON | 36 | 70 | 42 | 131 | 879 | 137 | 2 | 1 | 70 | 113 | 49 | 35 | 40 | 26 | 1,079 | 451 | 3,364 |
| MPB | 0 | 1 | 7 | 1 | 9 | 39 | 0 | 0 | 7 | 138 | 18 | 0 | 6 | 0 | 172 | 67 | 491 |
| NEFS 2 | 19 | 37 | 161 | 356 | 2,379 | 742 | 3 | 1 | 526 | 1,186 | 342 | 120 | 307 | 43 | 3,280 | 329 | 4,201 |
| NEFS 4 | 22 | 41 | 75 | 196 | 1,310 | 320 | 4 | 2 | 147 | 1,170 | 235 | 26 | 104 | 10 | 1,462 | 332 | 2,092 |
| NEFS 5 | 1 | 3 | 2 | 23 | 157 | 4 | 2 | 12 | 21 | 39 | 14 | 12 | 12 | 104 | 3 | 3 | 22 |
| NEFS 6 | 9 | 17 | 18 | 115 | 772 | 158 | 4 | 4 | 89 | 543 | 155 | 43 | 62 | 19 | 1,498 | 182 | 1,117 |
| NEFS 8 | 46 | 86 | 18 | 477 | 3,131 | 255 | 51 | 9 | 202 | 1,239 | 229 | 1,409 | 59 | 165 | 1,660 | 265 | 1,824 |
| NEFS 10 | 2 | 3 | 17 | 6 | 40 | 48 | 0 | 0 | 96 | 149 | 57 | 0 | 128 | 6 | 74 | 27 | 236 |
| NEFS 11 | 1 | 2 | 76 | 1 | 8 | 99 | 0 | 0 | 53 | 188 | 41 | 0 | 28 | 0 | 411 | 162 | 2,674 |
| NEFS 12 | 1 | 3 | 20 | 3 | 21 | 39 | 0 | 0 | 189 | 99 | 17 | 0 | 143 | 3 | 50 | 12 | 218 |
| NEFS 13 | 37 | 70 | 4 | 682 | 4,578 | 33 | 66 | 18 | 149 | 1,064 | 235 | 718 | 25 | 180 | 958 | 89 | 817 |
| NHPB | 0 | 0 | 7 | 0 | 0 | 1 | 0 | 0 | 0 | 3 | 0 | 0 | 1 | 0 | 4 | 3 | 32 |
| SHS 1 | 20 | 39 | 39 | 323 | 2,162 | 458 | 8 | 2 | 85 | 2,066 | 366 | 385 | 41 | 47 | 3,865 | 732 | 3,164 |
| SHS 2 | 8 | 16 | 13 | 97 | 638 | 155 | 5 | 2 | 123 | 434 | 88 | 101 | 65 | 54 | 968 | 139 | 913 |
| SHS 3 | 45 | 87 | 33 | 697 | 4,732 | 594 | 26 | 6 | 231 | 1,626 | 365 | 724 | 41 | 215 | 4,130 | 598 | 4,216 |
| Total | 289 | 556 | 645 | 3,275 | 21,922 | 3,528 | 176 | 58 | 2,166 | 12,043 | 2,567 | 3,606 | 1,201 | 905 | 21,754 | 3,988 | 30,186 |

**Classification**

NMFS is issuing this rule pursuant to 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), which provides specific authority for implementing this action.

BILLING CODE 3510–22–C

Section 305(d) authorizes NMFS to take action to carry out provisions in FMPs and of the MSA. In a previous action taken pursuant to section 304(b), NMFS approved the Council designed provisions in the FMP to authorize NMFS to annually adjust and distribute sector carryover consistent with MSA requirements to prevent overfishing and achieve optimum yield. See § 648.87(b)(1)(i)(C). The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

This final rule is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), NMFS finds good cause to waive prior public notice and opportunity for public comment on the allocation adjustments because allowing time for notice and comment is impracticable, unnecessary, and contrary to the public interest.

Notice and comment would be impracticable, unnecessary, and contrary to the public interest, as the distribution of unused quota carried over from the previous fishing year is an annual adjustment action that is expected by industry. These adjustments increase available catch, and sector vessels will be able to fish for this additional catch as soon as this action is in effect, which will provide increased operational flexibility and ability to catch its available allocation. They are routine, formulaic, and authorized by regulation. The public had prior notice and opportunity to participate in the development of and comment on the regulations implementing this process and expects this adjustment each year. Delaying these adjustments would result in a delay in the distribution of unused carryover to sectors, and could negate or reduce the intended economic benefits and increased operational flexibility provided by these adjustments. Carryover from 2022 was only recently finalized because it is based on data that was not available until the fall upon the conclusion of the catch accounting process for fishing year 2022.

Also, because advanced notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* do not apply to this rule. Therefore, no final regulatory flexibility analysis is required and none has been prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: November 30, 2023.

**Samuel D. Rauch, III,**

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

[FR Doc. 2023–26655 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 230224–0053; RTID 0648–XD343]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2023 Pacific cod total allowable catch (TAC) apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), December 1, 2023, through 2400 hours, A.l.t., December 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Abby Jahn, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 subparts H of 50 CFR parts 600 and 679.

The 2023 Pacific cod TAC apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA is 562 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2023 Pacific cod TAC apportioned to catcher/processors using HAL gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 552 mt and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using HAL gear in the Central Regulatory Area of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

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

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of Pacific cod by catcher/processors using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of November 29, 2023.

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

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

Dated: November 30, 2023.

**Michael P. Ruccio,**

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

[FR Doc. 2023–26660 Filed 11–30–23; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 88, No. 232
Tuesday, December 5, 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 HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2023–0907]**

**RIN 1625–AA00**

## Safety Zone; Fireworks Display, Pacific Ocean, Westport, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Pacific Ocean. This action is necessary to provide for the safety of life on these navigable waters near Westport, WA, during a fireworks display December 31, 2023, to January 1, 2024. This proposed rulemaking would prohibit persons and vessels from entering the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before December 20, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0907 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Carlie Gilligan, Waterways Management Division, Sector Columbia River, Coast Guard; telephone 503–240–9319, email *SCRWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background, Purpose, and Legal Basis

On October 23, 2023, an organization notified the Coast Guard that it will be conducting a fireworks display from 12 to 12:30 a.m. on January 1, 2024. The fireworks are to be launched from a site in Westport, WA at approximate location 46°54′17″ N; 124°05′59″ W. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 600-foot radius of the launch site.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 600-foot radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

## III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 11:30 p.m. on December 31, 2023 to 1 a.m. on January 1, 2024. The safety zone would cover all navigable waters within 600 feet of the launch site in Westport, WA located at approximate location 46°54′17″ N; 124°05′59″ W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 12 to 12:30 a.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

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

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM 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 would be able to safely transit around this safety zone which will impact a small designated area of the Pacific Ocean for less than 2 hours on two evenings 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it

qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*C. Collection of Information*

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

*D. Federalism and Indian Tribal Governments*

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

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

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 1.5 hours that would prohibit entry within 600 feet of a fireworks launch site. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

*Submitting comments.* We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2023–0907 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.T13–0907 to read as follows:

### § 165.T13–0907 Safety Zone; Fireworks Display, Pacific Ocean, Westport, WA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Pacific Ocean, surface to bottom, 600 feet from the fireworks display site at

approximately 46°54′17″ N; 124°05′59″ W. These coordinates are based on the launch site located on the Pacific Ocean near Firecracker Point, Westport, WA.

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

*Designated representative* means a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to a unit under the operational control of the U.S. Coast Guard Sector Columbia River and designated by or assisting the Captain of the Port Columbia River (COTP) in the enforcement of the regulations in this section.

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209–2468 or the Sector Columbia River Command Center on Channel 16 VHF–FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 11:30 p.m. on December 31, 2023 through 1:00 a.m. on January 1, 2024.

Dated: November 29, 2023.

**J.W. Noggle,**

*Captain, U.S. Coast Guard, Captain of the Port Columbia River.*

[FR Doc. 2023–26675 Filed 12–4–23; 8:45 am]

**BILLING CODE 9110–04–P**

## POSTAL SERVICE

## 39 CFR Part 111

## Shipping Address Label

**AGENCY:** Postal Service™.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to clarify the requirement of the service icon and service banner when a shipping address label is used.

**DATES:** Submit comments on or before January 4, 2024.

**ADDRESSES:** Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''Shipping Address Label''. Faxed comments are not accepted.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

**FOR FURTHER INFORMATION CONTACT:** Steven Jarboe at (202) 268–7690, Devin Qualls at (202) 268–3287, or Garry Rodriguez at (202) 268–7281.

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

Currently, when a shipping address label is used, the standards provide it is recommended the service icon and service banner be included on the label. Effective October 1, 2023, pursuant to the **Federal Register** Notice (88 FR 54239–54240) the Postal Service added a new validation requirement to Barcode Quality (BQ), a metric underneath its Intelligent Mail® package barcode (IMpb®) noncompliance measurement. The final rule outlined that the information provided on the label and the data contained within the barcodes, including Service Type Codes (STCs) must align and be correct. As a result, the Postal Service is proposing to require the correct service indicator composed of the service icon and service banner be included when a shipping address label is used.

In addition, the Postal Service is proposing to require the hazardous materials icon in lieu of the service icon be included when a shipping address label is used on items containing mailable hazardous materials.

Any variance in the physical aspect of the label affixed to a parcel presented for mailing may subject the piece to the IMpb noncompliance fee.

The Postal Service is proposing to implement this change effective January 21, 2024.

We believe the proposed revision will enable the Postal Service to provide customers with a more efficient mailing experience.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

## PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

**Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)**

* * * * *

**200 Commercial Letters, Cards, Flats, and Parcels**

* * * * *

**202 Elements on the Face of a Mailpiece**

* * * * *

**3.0 Placement and Content of Mail Markings**

* * * * *

**3.3 Priority Mail Express and Priority Mail Markings**

* * * * *

**3.3.2 Priority Mail**

[*Revise the text of 3.3.2 to read as follows:*]

Priority Mail pieces must have the basic price marking of ''Priority Mail'' printed in a prominent location on the address side. When a shipping address label is used, the basic required price marking must be printed as provided under 3.9.

* * * * *

**3.5 First-Class Mail and USPS Marketing Mail Markings**

**3.5.1 Types of Markings**

Mailpieces must be marked under the corresponding standards to show the class of service and/or price paid:

* * * * *

[*Revise the text of item d to read as follows:*]

d. When a shipping address label is used, the basic required price marking must be printed as provided under 3.9.

* * * * *

**3.6 USPS Ground Advantage—Commercial Markings**

**3.6.1 Basic Markings**

[*Revise the last sentence of 3.6.1 to read as follows:*]

* * * When a shipping address label is used, the basic required price marking must be printed as provided under 3.9.

* * * * *

**3.7 Parcel Select, Bound Printed Matter, Media Mail, and Library Mail Markings**

**3.7.1 Basic Markings**

[*Revise the last sentence in the introductory text of 3.7.1 to read as follows:*]

* * * When a shipping address label is used, the basic required price marking must be printed as provided under 3.9.

[*Delete items a and b in their entirety.*]

[*Delete Exhibit 3.7.1 in its entirety.*]

* * * * *

[*Delete 3.9, Marking Hazardous Materials, and add new 3.9 to read as follows:*]

**3.9 Shipping Address Label Markings**

**3.9.1 General**

When a shipping address label is used, it must include the correct service indicator composed of two elements, the service icon (except as provided under 3.9.2) and service banner. For information on the markings and specifications, see the Parcel Labeling Guide available on the PostalPro website at *postalpro.usps.com/parcellabelingguide*). Failure to comply may subject the piece to the IMpb noncompliance fee.

**3.9.2 Hazardous Materials**

When a shipping address label is used on items containing mailable hazardous materials, it must include the hazardous materials icon in lieu of the service icon as provided in the Parcel Labeling Guide.

* * * * *

[*Add new 9.0 to read as follows:*]

**9.0 Hazardous Materials**

**9.1 General**

Mailers must ensure that their packages meet all applicable markings under 3.0, and ancillary service endorsement requirements under 507.1.5.

**9.2 Shipping Address Labels**

When a shipping address label is used, the basic required price marking must be printed as provided under 3.9.

**9.3 Additional Elements**

All mailable hazardous materials must also include the applicable labels, markings, and tags, as required in Publication 52, *Hazardous, Restricted, and Perishable Mail.*

* * * * *

**600 Basic Standards for All Mailing Services**

**601 Mailability**

* * * * *

**8.0 Hazardous, Restricted, and Perishable Mail**

* * * * *

[*Add a new 8.5 to read as follows:*]

**8.5 Hazardous Materials Labeling**

All mailable hazardous materials must be marked as provided under 202.9.0 and include the applicable labels, markings, and tags, as required in Publication 52, *Hazardous, Restricted, and Perishable Mail.*

* * * * *

**Colleen Hibbert-Kapler,**

*Attorney, Ethics and Legal Compliance.*

[FR Doc. 2023–26483 Filed 12–4–23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R8–ES–2023–0095; FF09E21000 FXES1111090FEDR 234]**

**RIN 1018–BF06**

## Endangered and Threatened Wildlife and Plants: Threatened Status With Section 4(d) Rule for the Northern and Southern Distinct Population Segments of the Western Spadefoot

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the northern distinct population segment (DPS) of the western spadefoot (*Spea hammondii*), an amphibian occurring in central and northern California, and the southern DPS of the western spadefoot, occurring in southern California and northwestern Mexico, as threatened DPSs under the Endangered Species Act of 1973 (Act), as amended. This determination serves as our 12-month finding on a petition to list the western spadefoot range-wide. After a review of the best scientific and commercial information available, we find that listing the northern and southern DPSs of the western spadefoot as threatened is warranted. Accordingly, we propose to list the northern and southern DPSs of the western spadefoot as threatened DPSs with a rule issued under section 4(d) of the Act (''4(d) rule''). If we finalize this rule as proposed, it would add the northern DPS and southern DPS of the western spadefoot to the List of Endangered and Threatened Wildlife and extend the Act's protections to the two DPSs. Due to the current lack of data sufficient to perform required analyses, we conclude that the designation of critical habitat for the northern DPS and southern DPS of the western spadefoot is not determinable at this time.

**DATES:** We will accept comments received or postmarked on or before February 5, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 19, 2024.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* enter FWS–R8–ES–2023–0095, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this 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–R8–ES–2023–0095, 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://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

*Availability of supporting materials:* Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2023–0095.

**FOR FURTHER INFORMATION CONTACT:** Michael Fris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA 95825; telephone 916–414–6700. 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. Please see Docket No. FWS–R8–ES–2023–0095 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Why we need to publish a rule.* The Act defines a ''species'' as any

subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife which interbreeds when mature. Any reference to the term ''species'' in this document pertains to either the northern or southern DPS, unless otherwise noted. Under the Act, a DPS warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a DPS warrants listing, we must list the DPS promptly and designate the DPS's critical habitat to the maximum extent prudent and determinable. We have determined that the western spadefoot occurring in the Central Valley and foothill regions in the Sierra Nevada Mountains and along the northern Coast Ranges to Santa Barbara County in California, and the western spadefoot in southern California from Los Angeles County and Transverse Range south to northwestern Baja California, Mexico are valid DPSs as described in our 1996 policy (61 FR 4722) and meet the definition of threatened species; therefore, we are proposing to list them as such. Listing a species as an endangered or threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

*What this document does.* We have determined that the western spadefoot is comprised of two DPSs, the northern DPS and the southern DPS. We are proposing to list the northern DPS and southern DPS of the western spadefoot as threatened species with a rule under section 4(d) of the Act (a ''4(d) rule'') for both species.

*The basis for our action.* Under the Act, we may determine that a DPS is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the northern DPS and southern DPS of the western spadefoot are threatened due to the following threats: habitat loss, fragmentation, and degradation largely attributable to development, urbanization, and agricultural land conversion (factor A); chemical contaminants (factor E); nonnative predators (factor C); wildfire (factor A); noise disturbance (factor E); and the effects associated with climate change (most notably drought) (factor E). Of these threats, we identified habitat loss and degradation from land conversion (factor A) and the effects of climate change (factor E) mostly associated with severe drought as the major influences driving the current condition of the northern DPS and southern DPS of the western spadefoot.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. We have not yet been able to obtain the necessary economic information needed to develop proposed critical habitat designations for the two DPSs, although we are in the process of obtaining this information. At this time, we find that designation of critical habitat for the northern DPS and southern DPS of the western spadefoot is not determinable.

**Information Requested**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The two DPS's biology, range, and population trends, including:

(a) Biological or ecological requirements of the two DPSs, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of these two DPSs;

(d) Historical and current population levels, and current and projected trends;

(e) Past and ongoing conservation measures for these two DPSs, their habitat, or both; and

(f) Tribal use or cultural significance of the two species, including traditional ecological knowledge (TEK) on the two DPSs.

(2) Threats and conservation actions affecting the two DPSs, including:

(a) Factors that may be affecting the continued existence of the two DPSs, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these two DPSs.

(c) Existing regulations or conservation actions that may be addressing threats to these two DPSs.

(3) Additional information concerning the historical and current status of these two DPSs.

(4) Information on regulations that may be necessary and advisable to provide for the conservation of the northern DPS and southern DPS of the western spadefoot and that we can consider in developing a 4(d) rule for these two DPSs. In particular, we seek information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

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 include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule 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 any 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 this proposed rule,

will be available for public inspection on *https://www.regulations.gov.*

Our final determination may differ from this proposal because we will consider all comments that we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that either DPS is endangered instead of threatened, or we may conclude that either DPS does not warrant listing as an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the proposed 4(d) rule if we conclude it is appropriate to do so in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of either DPS. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of either DPS. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

*Public Hearing*

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

**Previous Federal Actions**

In 2005, although the western spadefoot was not listed as an endangered or threatened species under the Act, we included the species within our final Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon (Service 2005, entire). The recovery plan outlines conservation and management actions to be taken to help conserve vernal pool, swale, and ephemeral habitats, which include the habitat of the western spadefoot. On July 11, 2012, we received a petition from the Center for Biological Diversity (CBD) to list the western spadefoot (CBD 2012, pp. 1–86 and 197–203). On July 1, 2015, we published our 90-day finding in the **Federal Register** that found the petition to list the western spadefoot presented substantial information to indicate that listing may be warranted (80 FR 37568). We then added the western spadefoot to our national workplan to complete our 12-month finding for the species. This document serves as our 12-month finding and proposed listing rule for the species.

**Peer Review**

A species status assessment (SSA) team prepared an SSA report for the western spadefoot (Service 2023, entire). The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the western spadefoot SSA report. We sent the draft SSA report (Service 2020a, entire) to six independent peer reviewers and received two responses. Both peer reviewers noted significant concerns with our analysis, including how we characterized suitable terrestrial habitat, how we described habitat loss now and in the future, how we used or did not use data, and how we provided conclusions that were not justified. Because of this response, we held a meeting on July 8 and 9, 2020, with known species experts to receive information and guidance on ways to appropriately analyze the species throughout both the northern and southern clades. The western spadefoot is composed of two genetically distinct, allopatric clades that show no evidence of interbreeding, separated by the Transverse Mountain Range in California. In our SSA report, we refer to them as the northern western spadefoot clade, and the southern western spadefoot clade and assess their status separately.

The July 2020 expert meeting resulted in revisions to the condition category tables we used in the SSA report to assess the species' status and, therefore, also resulted in changing the results of our analysis. After revising the SSA report, we solicited another independent scientific review of the analysis. We sent the updated SSA report (Service 2020b, entire) to the same two peer reviewers who responded during the previous peer review and received responses from both. Results of this structured peer review process can be found at *https://regulations.gov.* In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the current SSA report (Service 2023, entire), which is the foundation for this proposed rule.

*Summary of Peer Reviewer Comments*

As discussed in Peer Review above, we received comments from two peer reviewers on the updated SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the contents of the SSA report. The peer reviewers generally provided additional references, clarifications, and wording suggestions. We revised the updated SSA report based on the peer reviewers' comments, including changing our condition categories for the current and future analyses, clarifying specific points where appropriate, and adding details and suggested references where needed. Peer reviewer comments are addressed in the following summary and were incorporated into the current SSA report (Service 2023, entire) as appropriate.

*Comment 1:* One peer reviewer stated that our assertion that there are no differences in habitat characteristics between the northern and southern clades of the western spadefoot was not accurate, as indicated by habitat models (Neal et al. 2018, entire) that showed southern locality characteristics cannot predict the northern range and vice versa.

*Our response:* We acknowledge that habitat characteristics in the northern and southern range are different and clarified our discussion of habitat for both DPSs as indicated by habitat modeling (Neal et al. 2018, entire) as appropriate in the current SSA report and included additional references that found western spadefoot occurrences in the northern clade are associated with grassland habitat whereas occurrences in the southern clade are associated with grassland and shrub/scrub habitat (Rose et al. 2020, p. 6; Rose et al. 2022, p. 2). The current version of the SSA

report reflects these differences (Service 2023, pp. 10–11).

*Comment 2:* One peer reviewer felt our characterization and use of precipitation data, which were used to determine current condition, were not adequate. They stated that our approach was too narrow, using only the most recent 6 years of average rainfall data, and that we should conduct a more thorough analysis using the last 100 years to fully capture the variance in precipitation across the range of both clades and therefore provide a more accurate current condition.

*Our response:* The approach we took looking at the most recent 6 years of data was similar to an analysis completed by other researchers (Fisher et al. 2018, pp. 6124–6132), which looked at recent drought implications on the longevity and age structure of the arroyo toad (*Anaxyrus californicus*), a federally endangered species that occurs in portions of the western spadefoot's range. Using the more recent data allowed us to gain insight into the magnitude, extent, and frequency of the current threats facing the species. In addition, although additional precipitation data are available, they are not available rangewide. As a result, we determined that the past 6 years of precipitation data constitute the best scientific information available for our analysis.

*Comment 3:* The peer reviewers questioned the assumption in the SSA report that occurrence information from the California Natural Diversity Database (CNDDB) can be used as proxies for breeding ponds. They stated that many of these occurrences are likely incidental records of adults near or crossing roads and are not indicative of a breeding pond. They also questioned assumptions made for the abundance analysis, including whether multiple overlapping records indicate one breeding pond or multiple breeding ponds, the timeframe for the occurrence data used, and how varying sampling efforts among populations may influence abundance estimates in the SSA report.

*Our response:* We recognize that there are limitations with the occurrence data we used; however, because no rangewide surveys or assessments have occurred of ponded habitat used by western spadefoots and the species uses ephemeral aquatic habitat for breeding (including habitat not characterized as ponds), we determined that the CNDDB data constitutes the best scientific information available for the rangewide status assessment on habitat use and abundance estimates. In the revised updated SSA report, we included additional detail on how the occurrence data were used for the abundance assessment and clarified our methods, such as providing additional detail on our method for assessing abundance and estimating the effective number of breeders within local populations.

*Comment 4:* One peer reviewer stated our approach to estimating the effective number of breeders within a local population likely inflates the estimates.

*Our response:* We acknowledge that our estimate of the effective number of breeders within a local population is likely an overestimation. The overestimation stems from our use and extrapolation of a single study (Neal 2019, entire), which was not rangewide or over an extended timeframe. Implementing additional surveys over a longer period would most likely give a more accurate number of effective breeders at occupied locations for the species. To assist in determining if our estimates were consistent and provided meaningful information, we compared our estimates to another amphibian species (black toad (*Bufo exsul*)) that uses similar habitats and found that our estimates for the two clades (although not exact) are similarly low and our breeding number estimates are consistent with the other species (Wang 2009, pp. 3852–3853). Lastly, our use and estimate of the effective number of breeders is only one component of determining the species' current and future resiliency in which we also considered habitat quantity, distribution, and quality as well as various precipitation variables. As a result, we have determined that our estimates are based on the best scientific information available and are appropriate to use in this assessment.

*Comment 5:* One peer reviewer was concerned about the current condition analysis for regions that have no data on the estimated effective number of breeders. They suggested using the average of the estimated effective number of breeders from surrounding regions or using the estimated effective number of breeders from the nearest region.

*Our response:* We updated our analysis to include an abundance category for those regions lacking data and used the estimated effective number of breeders from the nearest region to complete our analysis.

## I. Proposed Listing Determination

### *Background*

Below, we briefly describe information about the western spadefoot and its habitat and range. A thorough description and other information including life history and ecology of the western spadefoot is presented in the SSA report (Service 2023, pp. 4–22).

### Species and Habitat Information

The western spadefoot is a small amphibian often referred to as a toad but is typical in shape to most fossorial (burrowing) frogs. Individuals of the species vary in size from 1.5 to 2.5 inches (in) (3.8 to 6.3 centimeters (cm)) in length. Western spadefoots have a wedge-shaped, glossy black hardened ''spade'' on each hind foot that is used for digging burrows in the ground to avoid desiccation during the dry season, from late spring to early fall, or for sheltering during the active season (early fall to late spring).

The western spadefoot is primarily terrestrial and uses nearby aquatic habitat only for breeding and rearing (Dimmitt and Ruibal 1980, p. 21). The species requires a variety of both terrestrial and aquatic habitat components in close proximity and accessible to each other in order to meet all of their life history requirements (Halstead et al. 2021, 1377–1393). The terrestrial (upland) habitat is primarily open grasslands, scrub, or mixed woodland and grassland on flat or gently rolling topography and provides areas for sheltering and foraging (Stebbins and McGinnis 2012, p. 157). The aquatic habitat required for breeding, egg laying, and tadpole and juvenile development is most often associated with vernal pool or other ephemeral wetland areas. Vernal pools are seasonal shallow ephemeral aquatic features that pond in depressions that are underlain by a subsurface that limits drainage (Keeler-Wolf et al. 1998, p. 8). Vernal pools require the appropriate amount and timing of precipitation to fill each year. Some years with intermittent rainfall or during periods of drought, vernal pools may not provide habitat sufficient for successful breeding and rearing of the species. However, the species is highly adaptable and uses many other types of ponded water features for breeding and rearing including any water feature such as ponded features within intermittent streams, artificially created pools or ponds (*i.e.,* mitigation pools and livestock or agricultural ponds), drainage ditches, roadside pools or ruts, and other locations where water pools or ponds after rain events and provides sufficient time for reproduction and metamorphosis (Morey 1998, pp. 86–90; Morey 2005, p. 515; Service 2023, p. 13).

Western spadefoots are uniquely adapted to dry conditions and have several behavioral and physiological

adaptations to facilitate moisture retention and lessen the impacts associated with dry conditions (Service 2005, pp. II–228–II–229). One of these adaptations is its construction of burrows to allow for its long underground dry-season dormancy (Ruibal et al. 1969, pp. 573–577; Morey 2005, p. 516). To prevent water loss in the burrows, western spadefoots secrete a semipermeable membrane that thickens their skins making them highly resistant to dehydration and they are able to lose over half of their body weight due to evaporation (Duellman and Trueb 1994, pp. 197–203). While in their burrows western spadefoots are also able to absorb moisture from the soil by maintaining higher osmotic body fluid pressure that exceeds that of the soil moisture tension (Ruibal et al. 1969, pp. 578–581; Shoemaker et al. 1969, pp. 585–590).

*Range and Distribution*

The historical range of western spadefoot as a whole is from the vicinity of Redding in Shasta County, California, southward to northwestern Baja California, Mexico (Stebbins and McGinnis 2012, p. 157). In California, the western spadefoot is found throughout portions of the foothills of the Sierra Nevada Mountains up to 4,500 ft (1,385 m), the Central Valley, and in the Coast Range from Santa Clara and Santa Cruz Counties to San Diego County (Service 2023, figure 2, p. 7). In Mexico, western spadefoots are known to occur from the U.S. international border south to approximately El Rosario near Mesa de San Carlos in Baja California, Mexico (Grismer 2002, pp. 84–85; Amphibian and Reptile Atlas 2023, entire).

Currently, the species is patchily distributed throughout its historical range (Service 2023, p. 7). A species distribution model for the northern portion of the western spadefoot's range (north of Santa Barbara, California) found the areas predicted to have suitable habitat are patchily distributed north in the Coast Range, along the foothills surrounding both sides of the Central Valley, and in remnant habitat within the Central Valley (Rose et al. 2020, entire; Service 2023, pp. 33–34). The species in southern California, based on survey efforts from researchers and regional HCP monitoring and survey efforts on Department of Defense (DOD) facilities, is also patchily distributed with occupied areas associated with the large, urbanized areas of Los Angeles and San Diego being mostly extirpated. The species in Baja California, Mexico is distributed in small populations dispersed throughout its historical range in Mexico.

Taxonomy

The western spadefoot (*Spea hammondii*) was first described and named by Spencer F. Baird in 1859, from a specimen collected by Dr. J.F. Hammond near Redding, California (Baird 1859, p. 12). Until the late 1960s, the species was regarded as having a broad geographic range from California to western Texas and Oklahoma with a distributional gap in the Mojave Desert of California (Storer 1925, p. 148). In the late 1960s, researchers identified morphological, vocalization, and reproductive differences between eastern (Arizona eastward) and western (California and Baja California) populations, justifying species recognition for each entity (Brown 1967, p. 759). The study identified populations west of the Sierra Nevada Mountains and southward into Baja, Mexico, as retaining the name *Spea hammondii* (with a common name of western spadefoot), while the remainder of the populations were designated as *S. multiplicata* (Mexican spadefoot) or *S. intermontana* (Great Basin spadefoot).

Genetic Information

Genetic analysis of nuclear and mitochondrial DNA data from populations throughout the range of the western spadefoot identified two genetically distinct, allopatric (separate) clades that show no evidence of interbreeding, and researchers agree the two clades make up two separate entities (Neal et al. 2018, pp. 937–938; Neal 2019, p. 114).

*Distinct Population Segment Evaluation*

Under the Act, the term species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). To guide the implementation of the distinct population segment (DPS) provisions of the Act, we, and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries), published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population segment's discreteness from the remainder of the species to which it belongs, and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the population segment's conservation status is evaluated based on the five listing factors established by the Act to determine if listing it as either endangered or threatened is warranted.

Under the Act, we have the authority to consider for listing any species, subspecies, or, for vertebrates, any DPS of these taxa if there is sufficient information to indicate that such action may be warranted. Based on the information available regarding potential discreteness and significance for the western spadefoot, we have determined it is appropriate to review the status of the species by first conducting a DPS analysis.

Discreteness

Under our DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either of the following conditions: (1) it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

For the western spadefoot, we examined recent genetic information, the distribution of the species' populations, and a review of any potential barriers for dispersal as our means of determining discreteness for potential DPSs.

As discussed briefly above and in the SSA report (Service 2023, section 3.2, p. 5), there is substantial genetic evidence that the western spadefoot is biogeographically divided into two clades (a group of organisms having the same ancestral lineage) with no gene flow between the clades. Past genetic work on mitochondrial DNA analysis (Garcia-Paris et al. 2003, pp. 16–20) hinted at such separation but the sample size was limited. However, more recent genetic research (Neal et al. 2018, entire; Neal 2019, entire) looking at both nuclear and mitochondrial DNA with a larger sample size (45 sites for the northern clade and 20 sites for the southern clade) representing the distribution of the western spadefoot in California strongly suggests separation of the species into two entities. The

results of the most recent genetic research identified that individuals of the southern clade of *Spea hammondii* share more genetic characteristics with *S. intermontana* that occur in eastern California than they do with members of the western spadefoot clade in the north. In addition, the genetic information did not identify any mitochondrial haplotypes of the southern clade within the northern clade of the western spadefoot, signifying no apparent mixture of the two clades. These results confirmed that the northern and southern distributions of the western spadefoot are two genetically distinct, allopatric clades that show no evidence of interbreeding and are separate (Neal et al. 2018, p. 941; Neal 2019, pp. 107–114).

To further evaluate whether the northern and southern clades of western spadefoots are separate populations based on habitat associations, the same researchers (Neal et al. 2018, pp. 940–944; Neal 2019, pp. 1–30) used environmental niche modeling (ENM), that included numerous bioclimatic variables and slope information, to assess and quantify ecological differentiation that would be consistent with functional (physical) or physiological separation between the northern and southern populations. The results of the ENM further corroborated the genetic analysis results discussed above, with the western spadefoot inhabiting unique climatic niches between the northern and southern populations of western spadefoot indicating ecological differentiation. The genetic research and ENM identified the Transverse Range in northern Los Angeles and southern Santa Barbara counties as an area of unsuitable or unused habitat for the species that serves as a barrier to dispersal between the two populations. As a result, we have determined that the western spadefoot comprises two separately located discrete entities (northern and southern populations) that meet the condition of discreteness under our DPS Policy.

Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon, (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We evaluated each discrete population segment to see if it meets the conditions of significance under our DPS Policy, and we have determined that the two entities are significant to the western spadefoot.

The support for significance of the two DPSs is based, in part, on evidence that loss of either of these two population segments would result in a significant gap in the range of the taxon. The loss of either the northern or southern DPS would result in a substantial change in the overall range and distribution of the taxon. The loss of either the northern or southern DPS would shift the taxon's range by nearly half, resulting in a loss of range of approximately 450 miles (mi) (725 kilometers (km)) either north or south respectively. As a result, we have determined that the loss of the northern or southern DPS would result in a significant gap in the range of the taxon.

The support for significance of the two DPSs is also based on evidence that the two DPSs differ markedly in their genetic characteristics, such that the loss of the northern or southern DPS would result in the loss of a discrete genetic clade. As discussed above, the two DPSs have been found to be genetically divergent and thus most likely contribute to the adaptive capacity of the taxon. This in turn may assist each DPS to adapt to both near-term and long-term changes in its physical and biological environment, thereby maintaining its representation. As a result, we have determined that the loss of the northern or southern DPS would be significant in that they differ markedly in their genetic characteristics, which satisfies the criteria for significance under our DPS Policy.

Distinct Population Segment Conclusion

Our DPS Policy directs us to evaluate whether populations of a species are separate from each other to the degree that they qualify as discrete segments and whether those segments are significant to the remainder of the species to which they belong. Based on an analysis of the best available scientific and commercial data, we conclude that the northern and southern populations (clades) of the western spadefoot are discrete from each other due to their marked genetic and physical separation. Furthermore, we conclude that the two discrete population segments are significant, based on evidence that a loss of either population segment would result in a significant gap in the range of the taxon and on evidence that the discrete population segments differ markedly from each other in their genetic characteristics. Therefore, we conclude that the two populations (northern and southern) of western spadefoot are both discrete and significant under our DPS Policy and, therefore, qualify as DPSs, which are uniquely listable entities under the Act.

Based on our DPS Policy, if a population segment of a vertebrate species is both discrete and significant relative to the taxon as a whole (*i.e.,* it is a distinct population segment), its evaluation for endangered or threatened status will be based on the Act's definition of those terms and a review of the factors enumerated in section 4(a) of the Act. Having found that the two populations (clades) of the western spadefoot meet the definition of being DPSs, we then evaluate the status of the two populations of western spadefoot to determine whether either one meets the definition of an endangered or threatened species under the Act. The extent of the areas occupied by the two DPSs are within the historical range of the western spadefoot (Figure 1).

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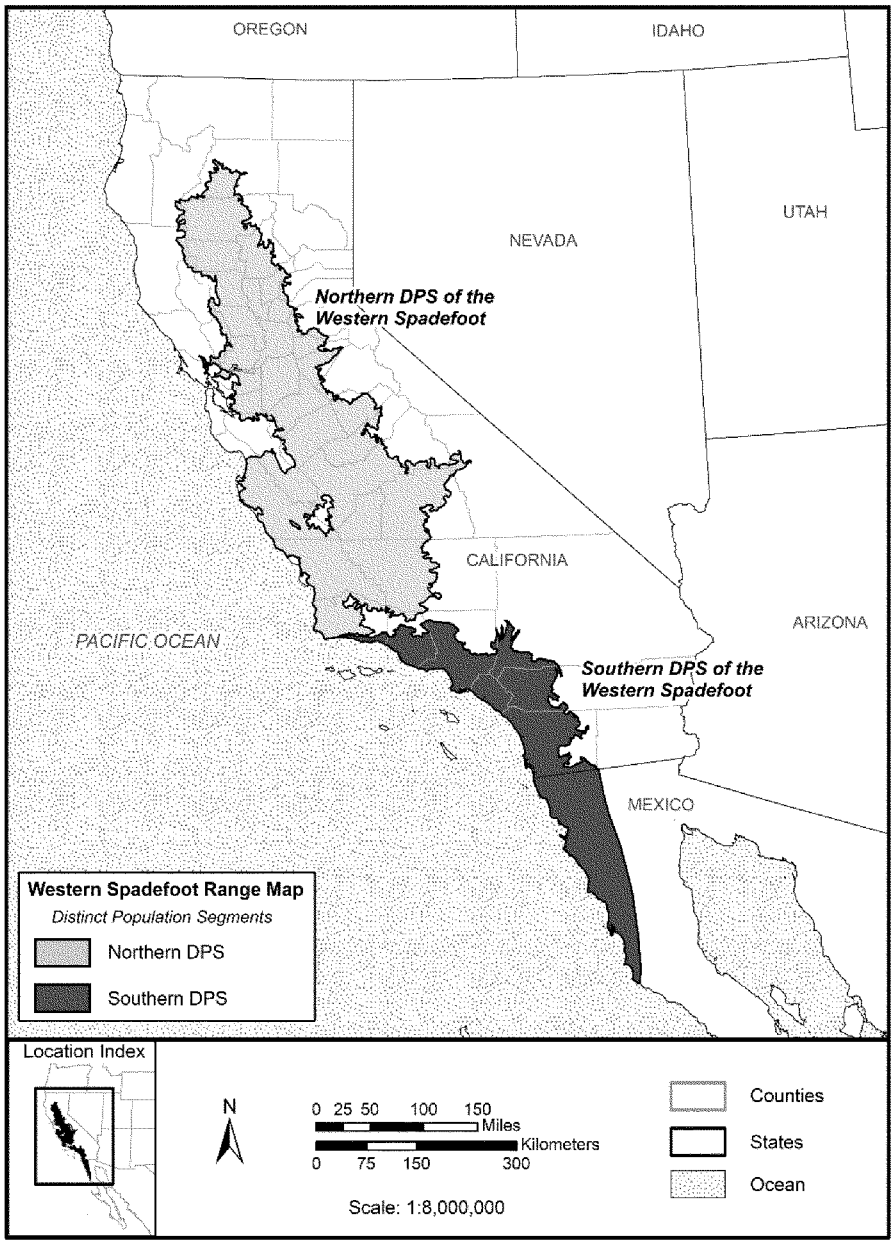


Figure 1: Distinct Population Segments of the Western Spadefoot

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Description of Western Spadefoot Distinct Population Segments

Below is a general description of the occupied extent of the northern DPS and southern DPS of the western spadefoot.

*Northern DPS of the Western Spadefoot:* The range of the northern DPS of the western spadefoot is entirely in California and includes the area of the Sacramento and San Joaquin Valleys from Shasta to Kern Counties including the lower elevation foothill areas of the Sierra Nevada Mountains and low-elevation and valley areas in the northern Coast Range from Tehama County south to Santa Clara County. In the southwest portion of the northern DPS's range, the occupied area extends from southern Santa Cruz County to southern Santa Barbara County of the Coast Range and is contiguous with the Central Valley portion of the DPS's range.

*Southern DPS of the Western Spadefoot:* The range of the southern DPS of the western spadefoot includes areas in southern California and northwestern Baja California, Mexico. In the United States, this includes valleys and low-lying areas of portions of the Coast Range from extreme southeastern Santa Barbara County south to Ventura, Los Angeles, San Bernardino, Orange, Riverside, and San Diego Counties. In Baja California, Mexico, this includes areas in the municipalities (municipio) of Tijuana and Playas de Rosarito, and portions of the municipalities of Tecate and Ensenada.

**Regulatory and Analytical Framework**

*Regulatory Framework*

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an

endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR parts 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

*Analytical Framework*

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the viability of the northern and southern DPSs of the western spadefoot, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of a species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of a species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of a species to adapt over time to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, a species' viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the western spadefoot's ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the two DPSs' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated each DPS's life-history needs. The next stage involved an assessment of the historical and current condition of each DPS's demographics and habitat characteristics, including an explanation of how each DPS arrived at its current condition. The final stage of the SSA involved making predictions about each DPS's responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of each DPS to sustain populations in the wild over time which we then used to inform our regulatory decision.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the two DPSs. To assess the current and future condition of each DPS, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

The following is a summary of the key results and conclusions from the SSA report for the western spadefoot. Our review of information in the SSA report reflects the acknowledgement of the separation between the northern and southern clades of the western spadefoot and provides information regarding each clade's (DPS's) current and future condition individually. The full SSA report can be found at Docket FWS–R8–ES–2023–0095 on *https://www.regulations.gov* and from the Sacramento Fish and Wildlife Office, see **FOR FURTHER INFORMATION CONTACT**.

**Summary of Biological Status and Threats**

In the discussion below, we provide information on the species needs at the individual, population, and species level, the threats that are influencing the western spadefoot, and each DPS's current and future condition at the individual, population, and DPS level as a result of the threats, to assess the overall viability and the risks to viability for both the northern and southern DPSs of the western spadefoot.

To evaluate the individual and cumulative threats that influence the current and future condition and viability of the two DPSs in each of their respective analysis regions, we evaluated the habitat factors of (1) habitat quantity and distribution, (2) habitat quality, and (3) rainfall, and the demographic factor of abundance for each DPS.

In determining potential future threats facing the northern and southern DPSs of the western spadefoot, we evaluated the existing threats and their magnitude or impact on each DPS. We then further evaluated the expected response of each DPS to those threats that we considered are driving the overall status of the two DPSs based on expected changes to the habitat and demographic factors identified above.

*Species Needs for the Western Spadefoot*

Below we discuss a summary of the information on the western spadefoot's individual, population, and species needs. For additional information on the species' needs see the SSA report (Service 2023, Chapter 7, pp. 12–22).

Individual Needs

The western spadefoot requires seasonal rains, aquatic breeding pools, appropriate terrestrial habitat, and food resources to fulfill its life history. The aquatic breeding pools and terrestrial habitat must be within dispersal distance of each other. The aquatic habitat includes water features such as vernal pools, ponds, ditches or other ponded surface waters with the appropriate temperature and hydroperiod for breeding and rearing young. The water features used by the species typically support inundation during the late fall to early spring depending on when precipitation events occur and hold water for a minimum of 3 consecutive weeks. The appropriate water temperature for allowing development of eggs and tadpoles is between 9 and 30 °C (between 48 and 86 °F). In addition, the western spadefoot requires the presence of upland habitat adjacent and accessible to the water features it uses for breeding and rearing. The dispersal distance required between upland refugia and aquatic habitat ranges and may be up to approximately 600 m (1,968 ft) with a mean dispersal distance of 40 m (131 ft) to 137 m (450 ft). The upland component is mostly associated with grassland or grassland/scrub vegetation on gently sloped landscapes with the appropriate soil makeup to allow for the species to create burrows and refugia during its active and inactive periods to avoid desiccation and provide cover. Other habitat or biological factors considered most significant for the western spadefoot include small invertebrate prey, and seasonal precipitation to fill aquatic habitat (November–May) (Service 2023, pp. 12–17).

Population Needs

At the population level, we used the best available information to assess the resources and circumstances that most influence the resiliency of western spadefoot populations. The population needs that we evaluate for this species are abundance, reproduction, and dispersal.

Because information on the exact make-up of populations for the western spadefoot is lacking, we looked to the western spadefoot's association with vernal pool habitat and the characteristics of vernal pools across the species' range as a proxy for determining population information. As a result, we divided the range of the two DPSs of western spadefoot into several regions based on the habitat characteristics of vernal pools. These regions are based partly on the recovery units in the Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon (Service 2005, pp. I–9—I–12), which were developed using the California Department of Fish and Wildlife's California Vernal Pool Assessment Preliminary Report (Keeler-Wolf et al. 1998, pp. 12–15). The vernal pool regions are separated largely on the basis of endemic species, with soils and geomorphology as secondary elements, but with some overlap of these features among vernal pool regions. The regions in the southern DPS's range were further refined by species experts to best capture the different habitat types where the western spadefoot is found across southern California and Mexico (Fisher pers. comm. 2020, entire). Although these regions do not encompass all western spadefoot occurrences, they capture the majority of the vernal pool habitat that is considered ideal for western spadefoot. In total, we identified 10 regions for the northern DPS of the western spadefoot and 10 regions for the southern DPS of the western spadefoot (six in the United States and four in Mexico) (see Service 2023, figure 8, p. 37).

*Population Abundance:* Population abundance estimates do not exist for the western spadefoot throughout its range. This is partly because consistent rangewide population surveying has not been completed. Additionally, life history characteristics and dry-season dormancy makes it difficult to survey for the species except when breeding ponds are available (which may not be every year) and the species is active and above ground or by surveying for egg masses in aquatic habitat. State Natural Heritage occurrence data are available for the species in California along with limited survey information for Baja California, Mexico (McPeak 2000, p. 15; Grismer 2002, pp. 84–85; iNaturalist 2020, unpaginated; Amphibian and Reptile Atlas 2023, entire; CNDDB 2023, entire); however, the occurrence information does not uniformly provide numbers of individuals or absence data. Even when the information is provided, it is variable in content and may be too broad and lacking site specifics, be opportunistic (*i.e.,* roadside records), and not revisited.

*Reproduction and Recruitment:* Although reproduction and recruitment estimates are not available for the western spadefoot rangewide, we were able to obtain recent estimates on the effective number of breeders in a subset of the breeding pools throughout most but not all of the western spadefoot's range (Neal 2019, pp. 95–165). The effective number of breeders is not a count of individuals; rather, it is the number of individuals that are contributing to the population size in a single cohort. Therefore, the effective number of breeders is a measurement of the relative reproduction and recruitment effort of the population and gives insight into habitat and resource conditions (Wang et al. 2011, p. 918) within the areas surveyed, at least in the near term. We used information from the above mentioned study (*i.e.,* Neal 2019, entire) and extrapolated it to develop rangewide estimates for both the northern and southern DPSs of the western spadefoot. This extrapolated information indirectly informed the potential demographic condition for the two DPSs. In order to do this, we averaged occurrence information across each region, which most likely overestimated abundance for the two DPSs. This overestimation was considered in our proposed listing determination for the two DPSs. See the SSA report for additional information (Service 2023, pp. 19, 20, 34–38).

For the northern DPS of the western spadefoot, the results of survey information identified the average effective number of breeders measured in multiple breeding pools to be near 5 individuals (5.25, ranging from 2.3 to 18.3) and for the southern DPS of the western spadefoot, the average effective number of breeders was 4 individuals (ranging from 1.4 to 20.7) (Neal 2019, p. 113). The required number of effective breeders for either DPS to reach population stability is unknown and information on the effective number of breeders for other species is lacking; however, we were able to compare the western spadefoot information with the black toad, another pond-breeding amphibian. The lowest estimation for effective number of breeders for the black toad ranged from 7 to 30 individuals (Wang 2009, pp. 3852–3853). Very small effective population sizes (<50 individuals) have been observed in other amphibians (Funk et al. 1999, pp. 1633, 1637; Rowe and Beebee 2004, pp. 292–296; Wang 2009, p. 3848; Wang et al. 2011, p. 914; Wang 2012, pp. 1033–1034; Richmond et al. 2013, p. 815). It is unknown if the small effective number of breeders that were measured for the western spadefoot are due to: (1) small population size due to population reductions; (2) recent extreme drought years throughout the western spadefoot's range; or (3) that the species has always had a low number of effective breeders per population. Our rangewide estimates for both the northern DPS and southern DPS of the western spadefoot are similarly low and consistent with the information provided in the initial study (*i.e.,* Neal 2019, entire).

*Dispersal:* Populations of western spadefoot need opportunities for dispersal and interbreeding among multiple well connected breeding pools (Halstead et al. 2021, pp. 1377–1393). Dispersal between breeding pools creates metapopulations that allow for gene flow, which is vital for preventing inbreeding (Neal et al. 2020, pp. 613–627), and allows for recolonization of areas (Halstead et al. 2021, p. 1378).

Western spadefoots must disperse from their underground burrows to aquatic breeding habitat during the breeding season in order to reproduce. Seasonal precipitation is the environmental cue that initiates emergence and breeding dispersal to aquatic habitat (Dimmitt and Ruibal 1980, p. 26). The dispersal distance for the species is variable and heavily dependent on the amount and timing of precipitation in a given year (Baumberger et al. 2020, pp. 1, 7–8). The maximum dispersal distance recorded for the western spadefoot is 605 meters (m) (1,985 feet (ft)) (Baumberger 2020, pers. comm.) with mean dispersal distances being 69 m (226 ft) to 137 m (450 ft) (Baumberger et al. 2020, p. 7; Service 2023 p. 19). After the breeding season, adults and juveniles must be able to return to their terrestrial habitat and occupy or create underground burrows for shelter during the hot, dry inactive period (approximately May–October).

Species Needs

At the species level, we consider the needs of the northern DPS and southern DPS of the western spadefoot in terms of redundancy and representation. In the SSA report and this proposed rule, we evaluated the redundancy of the northern and southern DPSs of the western spadefoot by considering the number and distribution of sites occupied by each DPS within each region in relation to the scale of catastrophic events that are likely to occur. Having multiple populations that are interconnected and able to withstand stochastic events and are distributed in multiple areas throughout each of the regions in our analysis, would allow for each DPS to withstand catastrophic events and therefore have sufficient redundancy at the species level.

Regarding representation, we consider the breadth of physical, ecological, and environmental diversity for the two DPSs based on their distribution within each geographic region. In general, these regions have broad distribution and the makeup of habitat within and between these regions encompass large physical, environmental, and climatic variability. These differences in conditions may influence temporal behaviors and may indicate genetic variability between geographic regions, which may help the two DPSs adapt to future environmental variability. Providing for each DPS of the western spadefoot with areas that represent the variation in climatic conditions and the unique biotic and abiotic features across each of the DPS's specific range would provide for representation for each DPS at the species level.

*Threats Influencing the Current and Future Condition of the Western Spadefoot*

Below is a summary discussion of threats and our evaluation of the response to those threats as described and analyzed in the SSA report for the western spadefoot. The specific threats associated with each DPS are identified in the status discussion for each DPS below. For additional information on the threats, see the SSA report (Service 2023, Chapters 8–10, pp. 22–82).

Our assessment of current and future threats impacting the northern and southern DPSs of the western spadefoot identified habitat loss, habitat condition (fragmentation, degradation, or alteration), nonnative predators, disease, wildfire, chemical contaminants, noise disruptions, the effects from climate change, and their cumulative impacts. We also considered existing conservation efforts and how they may be ameliorating the current threats. The threats we identified as having the most impact and potentially driving the status of the two DPSs include: the effects to habitat (loss, degradation, alteration, or fragmentation) (Factor A) from urbanization or land conversion and the effects of climate change related to drought and increasing temperatures (Factor E). For a discussion of the threats of nonnative predators, disease, wildfire, chemical contaminants, and noise disturbance, please see the SSA report (Service 2023, pp. 22–32).

In our assessment of the future threats impacting the two DPSs, we projected the main driving threats identified above out 30–40 years to approximately

mid-century (to 2060). We based this timeframe on information regarding the effects of climate change and expected human population growth. This timeframe represents estimates of mid-century climate projections and human population and development projections for California (The California Economic Forecast 2017, p. 2; Bedsworth et al. 2018, p. 23). This timeframe also represents multiple generations (5 to 6) for the species as well multiple potential periods of severe drought conditions as based on recent past climate change trends. The current and future threats and their impact to the western spadefoot are summarized below.

*Habitat Loss*

Both the northern DPS and southern DPS of the western spadefoot suffered dramatic habitat reductions in the mid to late 1900s when urban and agricultural development and water storage and delivery construction were rapidly destroying natural habitats in the Sacramento Valley, Central Valley, and southern California (Jennings and Hayes 1994, p. 96; Thomson et al. 2016, p. 134). This loss of habitat has been attributed as the predominant factor in the change from past abundance to the current fragmented distribution of the species (Morey 2005, p. 515). Although large-scale rapid loss of habitat has curtailed due to both a decrease in habitat conversion and implemented conservation efforts, we expect a low but persistent level of habitat loss from development and land conversion to continue to varying degrees within the range of the two DPSs in the future, especially near large, urbanized areas throughout the two DPSs' ranges.

*Habitat Fragmentation, Degradation, or Alteration*

The latent effects of habitat loss described above have led to much of the remaining occupied western spadefoot habitat becoming fragmented or isolated. Encroachment on and bifurcation of western spadefoot habitat from urbanization, agriculture, roads, canals, and other human associated features and infrastructure have reduced the extent of upland habitat, restricted dispersal opportunities, altered hydrology of aquatic habitat, and increased anthropogenic effects (*i.e.,* increased pollution, debris, human or pet access). Such impacts have limited the size of existing habitat and most likely reduced western spadefoot population abundance and distribution within the occupied areas. Small remnant areas may contain aquatic habitat with a shortened inundation period or provide less upland habitat, thereby reducing the needs of the western spadefoot (Shedd 2016, p. 20).

In addition, the plant community within the grassland landscapes in California has dramatically changed since European settlement of the area (Burcham 1956, pp. 81–85). These changes resulted from numerous factors including the reduction of wetlands, changes to native herbivore abundance and distribution, reduction of wildfire, and changes in vegetation from mostly perennial grasslands to annual nonnative species (Barry et al. 2006, pp. 7–9). Nonnative annual vegetation or overabundance of vegetation can degrade vernal pool habitat by intrusion into the ponded areas, increasing vegetative matter, or causing shortening of the hydroperiod of the pools (Clark et al. 1998, pp. 251–252; Marty 2005, pp. 1626–1632). Over time, such degradation and alteration may cause vernal pool and other wetland habitats to be less productive or be lost as breeding habitat for the western spadefoot due to changes in environmental conditions, reduction in upland areas, or lack of management options to maintain and conserve such areas (Marty 2005, p. 1626; Service 2005, pp. I–16–I–28, II–232–II–234; Vollmar et al. 2017, pp. 2–13).

*The Effects of Climate Change*

The effects of climate change impact numerous environmental conditions both directly and indirectly and include temperature, precipitation, wildfire frequency and intensity, sea-level rise, and drought conditions. In determining the effects of climate change on the western spadefoot, we looked at the impact of the effects of climate change as they relate to drought conditions and increased temperatures because these factors most likely impact the species' aquatic habitat that is required for breeding and rearing purposes.

*Drought Conditions:* Western spadefoots are dependent on the timing and amount of seasonal precipitation (precipitation patterns) as well as other environmental conditions for supplying both feeding and breeding resources for the species to meet its life-history requirements. Precipitation provides not only moisture for ponded habitat and prey but also cues western spadefoot to emerge from their underground burrows. In addition, the aquatic habitat must be a particular temperature and stay ponded during specific timeframes and length of time for western spadefoot reproduction to be successful (Service 2023, pp. 29–30).

California's annual and seasonal precipitation patterns are extremely variable, and dry conditions are common (California Department of Water Resources 2021, entire). As discussed above and in the SSA report, western spadefoots are adapted to dry conditions by both behavioral and physiological characteristics (see *Species and Habitat Information* above and Chapter 5 in the SSA report (Service 2023, pp. 9–10). The U.S. Drought Monitor (a partnership of several Federal agencies and programs) gathers national precipitation information and categorizes normal and dry years (drought conditions) into six categories of increasing dryness and severity that includes: normal or wet conditions (None), abnormally dry (level D0), moderate drought (level D1), severe drought (level D2), extreme drought (level D3), and exceptional drought (level D4) (U.S. Drought Monitor 2023, entire). Within the last 15 years, portions of California within the western spadefoot's range have experienced extreme drought conditions (D3 conditions) in 2007–2009, 2012–2014, and again in 2020 and 2022 (Williams et al. 2015, pp. 6823–6824; NOAA 2021a and 2021b, entire; California Department of Water Resources 2022, pp. 2–4) and exceptional drought conditions (D4 conditions) in 2014–2016 and 2021 (NOAA 2021a and 2021b, entire). Drought decreases the quality and quantity of aquatic breeding pools available for western spadefoots. Without aquatic breeding pools available, dispersal and reproductive opportunities are limited and may ultimately reduce the abundance of a population if those conditions continue over extended periods. Such drought conditions are expected to continue into the future (Diffenbaugh et al. 2015, pp. 3931–3936; Bedsworth et al. 2018, pp. 24–27). These recent extreme drought events (such as the 2012–2014 drought) may be a contributing factor to the currently estimated low effective number of breeders in western spadefoot populations (Williams et al. 2015, pp. 6819, 6826; Neal 2019, p. 32). Although it is uncertain whether the species' effective breeding population sizes will remain low or rebound from currently low levels, the lack of precipitation and the effects from severe droughts are a major driving threat and contribute to the current and future overall condition of the northern and southern DPSs of the western spadefoot.

*Increased Temperature:* In California, as a result of climate change, the annual average temperatures have increased by about 0.8 degrees Celsius (°C) (1.5 degrees Fahrenheit (°F)) since 1895,

with minimum temperatures rising nearly twice as fast as the maximum temperatures and the intensity, frequency, and duration of summer extreme heating events (heat waves) increasing since 1950 (Kadir et al. 2013, pp. 38, 48).

As stated in the SSA report, the aquatic habitat for western spadefoots must be within a particular temperature range and maintain inundation for egg development, tadpole growth, and metamorphosis to be successful (Storer 1925, p. 158; Burgess 1950, p. 49–51; Brown 1967, p. 746; Feaver 1971, p. 53; Morey 1998, p. 86; Service 2023, p. 13). Higher ambient temperatures can influence water temperatures and dry aquatic habitat sooner, thereby shortening the appropriate breeding season for the western spadefoot.

The future effects of climate change will likely continue to cause increased temperatures throughout the range of both western spadefoot DPSs (Bedsworth et al. 2018, p. 22). In California, statewide models project warming of an additional 2–4 °C (3.6–7.2 °F) (Representative Concentration Pathway (RCP) 4.5, medium-emissions scenario) to 4–7 °C (7.2–12.6 °F) (RCP 8.5, high-emissions scenario) by the end of the century depending on future greenhouse gas emissions (Pierce et al. 2018, pp. iv, 17–18). These mean annual changes in temperature will likely have impacts and be felt most strongly as extreme temperature events, which are predicted to increase (Pierce et al. 2018, pp. 18–19). The future impacts from increased temperatures would result in a continued negative impact on aquatic habitat, which may reduce opportunities for or result in a reduction in breeding success (by increasing water temperatures or reducing inundation periods) for the northern and southern DPSs of the western spadefoot.

*Conservation Efforts and Regulatory Mechanisms*

Several vernal pool species (vernal pool crustaceans and plants) that occur within the range of both the northern and southern DPSs of the western spadefoot are listed as endangered or threatened species under the Act (Service 1998, p. 3; Service 2005, Table I–1, pp. I–4–I–7). The western spadefoot is included as a covered species in the 2005 Recovery Plan for Vernal Pool Species (Service 2005, pp. II–220–II–235). In the northern DPS of the western spadefoot's range, the endangered Santa Barbara DPS (Service 2000, entire) and the threatened Central DPS (Service 2004, entire) of the California tiger salamander (*Ambystoma californiense*), and the threatened California red-legged frog (*Rana draytonii*) (Service 1996, entire) are found. The California red-legged frog also occurs in portions of the range of the southern DPS of the western spadefoot in southern California and Baja California, Mexico (Peralta-Garcia et al. 2016, pp. 168–170; Thomson et al. 2016, pp. 103–104). The California Department of Fish and Wildlife (CDFW), on its Special Animals List, considers the western spadefoot as a priority ''Species of Special Concern'' with a global and State ranking as a vulnerable species (G3 and S3—at moderate risk of extinction due to a restricted range, relatively few populations (often 80 or fewer), recent and widespread declines, or other factors) (Thomson et al. 2016, p. 103; CDFW 2019, entire).

As a result of these regulatory or recovery actions, a number of conservation efforts have been carried out directly and indirectly for the purpose of conserving and recovering listed vernal pool and amphibian species including the western spadefoot. Some of those conservation actions have included land acquisition and restoration for the purpose of protecting vernal pool and ponded habitat that is beneficial for the western spadefoot. A study of extant vernal pool habitat preserved within regions of the northern DPS of the western spadefoot found 270,329 ac (109,398 ha) out of 764,862 ac (309,529 ha) of extant vernal pool habitat (35 percent) protected in the northern DPS's range (Vollmar et al. 2017, pp. 1–14). In the southern DPS's range in California, approximately 157,554 ac (63,760 ha) of known western spadefoot habitat has been preserved out of approximately 306,782 ac (124,151 ha) (approximately 51 percent) (Service 2023, table 6). This conservation has been achieved in large part as a result of the land acquisition, protection, and restoration activities associated with Service-permitted Habitat Conservation Plans (HCPs) and State natural community conservation plans (NCCPs) (CDFW 2015, entire). The HCPs and NCCPs within the range of the two DPSs provide mechanisms to balance wildlife conservation with development or other activities that may negatively impact sensitive species. Currently, 15 HCPs and 15 NCCPs (some are combined HCP/NCCPs) include western spadefoot as a covered species (5 HCPs are within the range of the northern DPS, and 10 HCPs are within the range of the southern DPS in California) (Service 2023, pp. 101–108, Appendix A). When looking at all the conservation efforts for the western spadefoot the number of populations occurring on managed preserves and considered conserved is 17 populations for the northern DPS and 102 populations for the southern DPS. Approximately 17 percent of the habitat available to the northern DPS is conserved, compared to approximately 50 percent for the southern DPS of the western spadefoot (Service 2023, p. 62). Conservation activities that have been included in HCPs for the western spadefoot include habitat protection, light pollution minimization, erosion control of vernal pool habitat, work windows that avoid the reproductive season when western spadefoot are dispersing, exclusion fencing, entrapment avoidance, and monitoring. Several large-scale HCPs have been implemented and are currently protecting large areas of habitat for the western spadefoot. Two examples of large-scale HCPs in the range of the southern DPS of the western spadefoot include the 2004 Western Riverside County Multi-Species HCP (MSHCP) (Dudek and Associates 2003, entire) and the 1998 South County HCP in San Diego County (San Diego County 1998, entire). These two HCPs cover areas in the western portion of the southern DPS's range and help minimize the effects of urbanization, development, and other human activities as well as assist in maintaining populations of the southern DPS by establishing connected ecosystem preserves, controlling unauthorized access, monitoring habitat conditions, and maintaining and improving aquatic and upland habitat. Together, the two HCPs have established over 425,000 ac (171,992 ha) of preserve lands in the western portion of the southern DPS's range. Although not all of the preserve land is used by the southern DPS, the preserve land they do occupy within the two HCP areas is well connected and provides both aquatic and upland habitat of high quality.

For the northern DPS of the western spadefoot several large-scale HCPs have also been implemented including the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (San Joaquin Co. Plan) (San Joaquin County 2000, entire), the South Sacramento Habitat Conservation Plan (County of Sacramento et al. 2018, entire), and the Yolo HCP/NCCP (Yolo Habitat Conservancy 2018, entire). These plans cover areas in Central and Sacramento Valley portions of the northern DPS's range (San Joaquin, Sacramento, and Yolo Counties) and help minimize the effects of urbanization, development, and other human activities as well as assist in

maintaining populations of the northern DPS by establishing connected ecosystem preserves were possible, monitor habitat conditions, and maintain and improve aquatic and upland habitat for the northern DPS of the western spadefoot. The San Joaquin Co. Plan is the longest standing plan and has assisted in conserving approximately 20,196 ac (8,173 ha) of habitat including areas of vernal pools, seasonal wetlands, vernal pool grasslands, and foothill grasslands that are used by the northern DPS of the western spadefoot. The South Sacramento Habitat Conservation Plan and Yolo HCP/NCCP are recently approved and implemented plans and the level of conservation is not to the extent of the San Joaquin Co. Plan, although some conservation within the two plan areas has been implemented and previously established preserves (outside of the planning efforts) within the plan areas do protect and conserve habitat used by the northern DPS of the western spadefoot, especially in areas occupied by other listed species such as the vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), and California tiger salamander.

In addition to HCPs, several Department of Defense (DOD) facilities are within the range of both the northern and southern DPSs of the western spadefoot, and these installations have developed integrated natural resources management plans (INRMPs) that help guide management of natural resources in a manner consistent with sustainability of natural resources. Conservation measures within the INRMPs are included specifically for western spadefoot or for vernal pool habitat that western spadefoots use. The DOD facilities associated with western spadefoot in the northern DPS's range include the U.S. Army facilities of Fort Hunter Liggett in Monterey County (DOD 2022b, entire), and Camp Roberts in Monterey and San Luis Obispo County (DOD 2022a, entire) and Vandenberg Space Force Base in Santa Barbara County (DOD 2015, entire; DOD 2021, entire). The measures being implemented by these facilities are assisting to protect and conserve habitat and are assisting in providing localized connectivity of habitat and redundancy of habitat in areas under DOD jurisdiction.

The DOD facilities in the southern DPS of the western spadefoot's range include areas in San Diego County associated with Marine Corp Base Camp Pendleton in the Coastal Military Land Region. The Base occupies approximately 125,000 ac (50,586 ha) in northwestern San Diego County. Surveys conducted in 2013 detected the southern DPS at 70 locations across the Base. Conservation measures being implemented to conserve the southern DPS of the western spadefoot include: management and control of nonnative species; erosion control; education and training; habitat restoration, creation, and enhancement; off-road vehicle restrictions in sensitive areas; survey and monitoring; use adaptive management based on the best available science; and avoidance and minimization measures (MCB Camp Pendleton INRMP, DOD 2018, pp. N–69–N–70). The measures being implemented by these facilities are assisting to protect and conserve habitat and are assisting in providing localized connectivity of habitat and redundancy of habitat in areas under DOD jurisdiction.

However, conservation of habitat alone by HCPs and INRMPs or through other regulatory mechanisms would not reduce the impacts associated with increased temperatures or drought associated with the effects of climate change on the northern DPS and southern DPS of the western spadefoot.

Current Conditions

We describe the current condition of the two DPSs of the western spadefoot by characterizing their status in terms of resiliency, redundancy, and representation by analyzing the impact of both threats and conservation efforts on each DPS's individual and population needs. Our analysis of the current condition of the two DPSs is limited to the available records of observations for the species, the habitat quantity and quality in the areas they occur, the availability of dispersal between populations, the magnitude and distribution of threats across the landscape acting on each DPS, and the number of effective breeders estimated for areas for which data were available.

In our analysis of the recorded observations of the species, we reviewed those more recent records from 1980 to present to eliminate older records. In our analysis, we grouped occurrences within each of our defined geographic regions for each DPS. Regions with greater percentage of occupancy were considered to be able to better withstand any negative environmental or demographic stochastic events. Recent research has determined that habitat within a 2,000-m (6,562-ft) buffer of a spadefoot occurrence in the northern clade, and 1,000-m (3,281-ft) buffer in the southern clade, is the best predictor of habitat use for the two DPSs (Rose et al. 2020, p. 1; Rose et al. 2022, p. 9). To assess habitat quality, we reviewed the amount of grassland or shrub/scrub habitat within these predicted use areas. Because the species is dependent on seasonal precipitation patterns to fill and pond aquatic habitat for breeding and rearing, we evaluated the number of average precipitation seasons over a lifespan of an individual (approximately 6 years). By looking at this timeframe, we would be able to assess if an individual would have the opportunity to reliably breed and reproduce during its lifetime. However, as discussed above, the species is adaptable and is able to use nontraditional habitat such as roadside ditches, waterfilled depressions, and ponded intermittent stream habitat as well as their preferred vernal pool habitat. Finally, we looked at information regarding the number of effective breeders at various locations where that information was available for the two DPSs to assist in determining abundance (see *Reproduction and Recruitment* above and Service 2023, pp. 19–20, section 7.2.3 Abundance). In areas that did not have information on the effective number of breeders, we looked to areas that were adjacent or had similar habitat and environmental conditions and qualitatively made our assessment for that region. Due to the limited information on occurrence records in Mexico, we looked to the species' occurrence information and relative degree of threats for the areas where they occur. Although the number of effective breeders required to support populations of the species at any given location is unknown, we considered those regions with higher numbers to be in better condition than those with lower numbers. To determine the overall current condition of the species in a region, we assessed the number and distribution of records of the species, habitat quantity/distribution, habitat quality, precipitation, and abundance together in our analysis.

Western Spadefoot Northern DPS—Current Condition

As discussed above, we divided the northern DPS of the western spadefoot into 10 regions. We evaluated the condition of each region individually and then determined the overall current condition of the northern DPS of the western spadefoot by combining our results for each region. Below we provide a summary of the current condition of the northern DPS of the western spadefoot.

*Current Resiliency.* As discussed in the SSA report (Service 2023, pp. 39–46), because we have limited information on long-term population trends for the DPS, we evaluated the

northern DPS of the western spadefoot's resiliency as a function several factors including habitat quantity and distribution, habitat quality, precipitation and whether it provides for sufficient aquatic habitat over time, and estimated abundance based on the effective number of breeders, as discussed above.

In reviewing the habitat conditions for the northern DPS of the western spadefoot, we found that, in the 10 regions we identified in our analysis, the majority (8 of 10) had large amounts of habitat that was well distributed throughout each region. The habitat quality for the regions varied geographically, with the regions associated with urbanized or fragmented habitat areas on the valley floor in low condition, and the regions located away from urbanized areas within higher elevation foothills of the Sierra Nevada Mountains or Coast Range having moderate or high quality habitat conditions. The rainfall or precipitation factor that we used in our analysis to account for the availability of aquatic habitat varied from high to moderate depending on the region's geographic distribution from north to south respectively, with those regions in the north having higher rainfall conditions. The demographic factor of abundance estimated by the effective number of breeders was found to be equally low for all regions and resulted in an overall current resiliency for the 10 regions to be either in low-moderate or low condition with 6 in low and 4 in low-moderate condition (Service 2023, pp. 32–48, table 3). However, as discussed above, the estimates for effective number of breeders is based on limited information and is considered very low when compared to other species and may either be a result of that incomplete information or that the species exhibits this life history trait and is able to maintain populations on the landscape despite low abundances. Based on the DPS's habitat factors being relatively high, all regions having recent occurrence records with evidence of breeding and recruitment, and the DPS being able to at least maintain populations throughout its historical range despite the latent impacts of habitat loss and current threats facing the DPS, we have determined that overall the populations of the northern DPS of the western spadefoot currently have sufficient resiliency to withstand population-level stochastic disturbances.

*Current Redundancy.* The northern DPS of the western spadefoot, despite habitat loss and fragmentation, is well distributed with approximately 160 local populations occupying areas throughout its historical range and in the regions that we identified for our analysis. Many of the areas occupied are also part of large-scale (county-wide) habitat conservation efforts or located on military installations (Camp Roberts, Fort Hunter Liggett, and Vandenberg Space Force Base), which have management plans in place to protect the DPS and its habitat. Other conserved and protected areas where the species occurs are located throughout the range of the DPS. As a result, the DPS currently has a sufficient number and distribution of populations to be able to spread the risk among multiple populations to minimize the potential loss of the DPS from catastrophic events. Therefore, we consider the northern DPS of the western spadefoot to currently have sufficient redundancy.

*Current Representation.* The northern DPS of the western spadefoot is distributed within the 10 regions identified in our analysis. As discussed above, we identified our analysis regions partly on the vernal pool regions identified by the California Department of Fish and Wildlife's California Vernal Pool Assessment Preliminary Report (Keeler-Wolf et al. 1998, pp. 12–15). These regions define vernal pool habitat largely on the basis of ecological characteristics, endemic species, soils, and geomorphology, and species occupying these habitats are uniquely adapted to the characteristics of the habitat where they occur. Because the DPS still maintains its distribution within all regions identified, we would expect the DPS to have sufficient ecological diversity and be able to adapt to the various environmental conditions it currently faces in the regions it occurs. Therefore, we consider the northern DPS of the western spadefoot to currently have sufficient representation.

Western Spadefoot Southern DPS—Current Condition

The current distribution of the southern DPS of the western spadefoot in California and Mexico is similar to its historically occupied range except for the areas associated with the heavily urbanized areas of the Los Angeles basin, San Diego County, Taiquana, Mexico, and other heavily developed areas along the California and Baja California coast (Service 2023, pp. 7–8). Recent occurrence information in Baja California, Mexico, has identified additional occurrence records throughout the historically occupied range of the species in Mexico (Amphibian and Reptile Atlas of Peninsular California 2023, entire). Based on this information, we consider that the DPS to have numerous well distributed populations consisting of recent (2018–2023) records (Amphibian and Reptile Atlas 2023, entire; CNDDB 2023, entire).

*Current Resiliency.* As discussed above, we have limited information on long-term population trends and abundance information for the species. As a result, we evaluated the southern DPS of the western spadefoot's current resiliency as a function of habitat quantity/distribution, habitat quality, precipitation, and demographic factors.

In reviewing the habitat for the southern DPS of the western spadefoot, we found that 9 of 10 regions have sufficient quantity of habitat that is well distributed throughout each region. As a result we categorized the habitat quantity and distribution to be high. The remaining region (Baja Central) is categorized as having low habitat quantity and distribution because of the limited information on the known populations in the regions and the makeup of their habitat. However, one population in Baja California is surrounded by habitat that is comprised of more than 80 percent grassland or scrub/shrub habitat (high category). As discussed above, recent information has identified additional occurrence records in the region and these records, based on our evaluation of aerial imagery, occur mostly in areas of suitable habitat type and are located away from development (Amphibian and Reptile Atlas 2023, entire).

The habitat quality in 7 of 10 regions is high with 3 in the low category. The 3 regions in low occur in Baja California, Mexico (Baja Northwest, Baja Central, and Baja South) because the percentage of grassland or scrub/shrub habitat within a recommended distance from some of the occurrence locations is below the threshold for this species—80 percent. However, although specific habitat information is not available, a review of the aerial imagery associated with the recent Baja California records identifies large portions of open grassland or shrub/scrub habitat type, but the exact type is uncertain. The rainfall or precipitation factor attributing to the likelihood of ponded habitat being available in each region was considered moderate based on precipitation patterns being relatively uniform across the 10 geographic regions.

The demographic factor of abundance estimated by the effective number of breeders was considered low for all regions except the Baja Central and Baja South Regions in Mexico, which we identified as unknown. The

demographic factor of abundance estimated by the effective number of breeders was found to be equally low for all regions and resulted in an overall current resiliency for 7 of 10 regions to be low-moderate and 1 region in low condition (Service 2023, pp. 50–56, table 4). However, as discussed above, the estimates for effective number of breeders is based on limited information and is considered very low when compared to other species and may either be a result of that incomplete information or that the species exhibits this life history trait and is able to maintain populations on the landscape despite low abundances. Based on the DPS's habitat factors being relatively high, all regions having recent occurrence records with evidence of breeding and recruitment, the reduction of threats due to conservation efforts (see redundancy below), and the DPS being able to at least maintain populations throughout its historical range despite the latent impacts of habitat loss and current threats facing the DPS, we have determined that overall, the populations of the southern DPS of the western spadefoot currently have sufficient resiliency to withstand population-level stochastic disturbances.

*Current Redundancy.* The southern DPS of the western spadefoot, despite habitat loss and fragmentation, is well distributed with more than 300 local populations currently extant and occupying all areas throughout its historical range. Many of the areas occupied are also part of large-scale (county wide) habitat conservation efforts (10 HCPs that identify the southern DPS as a covered species) that have conserved approximately 51 percent of available habitat for the DPS (Vollmar et al. 2017, pp. 1–14) or located on military installations (Marine Corps Base Camp Pendleton), which have management plans in place to protect the DPS and its habitat. Other conserved and protected areas where the DPS occurs are located throughout the range of the DPS. As a result, the DPS currently has a sufficient number and distribution of populations to be able to spread the risk among multiple populations to minimize the potential loss of the DPS from catastrophic events. Therefore, we consider the southern DPS of the western spadefoot to currently have sufficient redundancy.

*Current Representation.* The southern DPS of the western spadefoot is distributed within the 10 regions identified in our analysis. As discussed above, we identified our analysis regions partly on the vernal pool regions identified by the California Department of Fish and Wildlife's California Vernal Pool Assessment Preliminary Report (Keeler-Wolf et al. 1998, pp. 12–15) as well as species expert information. Because the DPS still maintains its distribution within all the regions identified, we would expect the DPS to have sufficient ecological diversity and be able to adapt to the various environmental conditions it currently faces based on the variable ecological regions in which it occurs and its adaptability of aquatic habitat it uses for breeding. Therefore, we consider the southern DPS of the western spadefoot to currently have sufficient representation.

The latent effects and current impacts from urbanization have resulted in a reduction and fragmentation of the southern DPS's habitat, thereby reducing connectivity between occupied areas and isolating populations. Recent severe multi-year drought conditions have impacted aquatic habitat across the DPS's range, limited breeding opportunities, and most likely contributed to the limited number of breeders being currently estimated for the DPS. However, our review of the DPS's current condition has found that the currently extant populations frequently occur in clusters of high-quality grassland and scrubland habitat that is within close proximity. Having numerous well distributed populations in high-quality aquatic and upland habitat will assist in reducing the impacts of drought. This gives the DPS the opportunity for dispersal and provides demographic connectivity. In addition, extensive habitat management in place through HCPs and INRMPs has been implemented, which assists in offsetting the effects of past habitat loss by protecting both the aquatic and upland estivation habitat as well as connectivity between such features. Because the DPS has more than 300 currently extant populations that are well distributed on the landscape and occur in high quality aquatic and upland habitat and many of these areas having substantial in-place and ongoing conservation and management to assist in protecting, conserving, and maintaining habitat availability, distribution, and quality for the DPS, we consider that the southern DPS of the western spadefoot to currently have sufficient resiliency, redundancy, and representation.

Future Conditions

Below we provide information on the future condition of the northern DPS and the southern DPS of the western spadefoot.

Western Spadefoot Northern DPS—Future Condition

As discussed in the SSA report, to assist in our analysis of the northern DPS of the western spadefoot's future condition, we developed three plausible future scenarios based on differing emission projections and threat levels (RCP 4.5, RCP 8.5 with a continued threat level, and RCP 8.5 with increased threat levels) looking out approximately 30–40 years (Service 2023, chapter 10, pp. 57–82). This range represents estimates of mid-century climate projections and human population growth and development projections for California (The California Economic Forecast 2017, p. 2; Bedsworth et al. 2018, p. 23; California Department of Finance 2023, entire). Emission projections and their effects on climatic conditions are projected to at least the year 2100 (approximately 75 years). However, the timeframe we can reasonably predict the western spadefoot's response to these changing climate conditions is shorter due to the lifespan of the species and uncertainties associated with localized climate conditions. As a result, our foreseeable future is considered to extend to approximately the year 2060. This timeframe considers both environmental (the effects of climate impacts) and human use impacts (effects from habitat loss, fragmentation, degradation, and alteration) as we can reasonably predict the two DPS's response to these threats into the future. Scenario 1 includes an emission threshold of RCP 8.5 with increasing threats associated with development and drought. Scenario 2 includes a continuation of existing threats at their current magnitude under an RCP 8.5 emission threshold. This would result in decreases in habitat quality and increase of the effects of climate change. Scenario 3 includes threats following an RCP 4.5 emission threshold that would also cause a decrease in habitat quality and increase of the effects of climate change but at lower levels (Service 2023, pp. 61, table 5).

As stated above, the current populations of the northern DPS of the western spadefoot still occur throughout their historical range although the habitat has been fragmented and some populations are isolated and are most likely small with limited effective population sizes. In the future, drought conditions are expected to become more frequent and be of higher intensity and duration. The future condition that is consistent across all three scenarios is increasing effects of climate change (drought, increased temperatures), with

impacts only varying by degree. These impacts would most likely affect the DPS's aquatic habitat and its ability breed and reproduce and result in additional reductions in population size. Although the western spadefoot is adapted to variable environmental conditions such as drought, extended drought periods may become more frequent and may increase the timeframe between successful breeding events, which in some cases may be beyond the life expectancy of adults. This would lead to a reduction in population size and may extirpate smaller populations or those occupying degraded or fragmented habitat. Human population growth and the effects of urbanization are expected to continue in the future and would further fragment and degrade habitat, reduce population connectivity, and result in additional population declines across the approximately 160 current local populations. Potential extirpations of populations of the northern DPS of the western spadefoot from regions would result in fewer populations to maintain redundancy and thereby compromise the DPS's ability to withstand even localized catastrophic events. The loss of populations may also result in a decline of genetic diversity or occupancy in the variable ecological settings where it currently occurs thereby reducing the representation of the northern DPS of the western spadefoot.

Western Spadefoot Southern DPS—Future Condition

Our method for analyzing the future condition of the southern DPS of the western spadefoot is the same as for the northern DPS. As stated above, the current populations of the southern DPS of the western spadefoot have been fragmented and are isolated and are most likely small with a limited number of expected breeders. Increasing effects of climate change in the future (drought, increased temperatures) are projected across all three future scenarios, affecting the DPS's aquatic habitat and its ability to breed and reproduce, resulting in additional reductions in population size. More frequent, extended drought periods may be beyond the life expectancy of adults. This would lead to reductions in population sizes and may extirpate smaller populations or those occupying degraded or fragmented habitat. In the future, we would expect the impacts from largescale habitat loss due to urbanization or other land use conversion to be diminished due to conservation efforts associated with HCPs and INRMPs. However, we expect the effects of climate change associated with drought to increase. Reductions in resiliency and/or extirpation of populations of the southern DPS of the western spadefoot would result in fewer populations to maintain redundancy, compromising the DPS's ability to withstand catastrophic events. The loss of populations may also result in a decline of genetic diversity or occupancy in the variable ecological settings where it currently occurs, reducing representation of the southern DPS of the western spadefoot into the future.

**Determination of Western Spadefoot Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

**Determination of Status for the Northern DPS and Southern DPS of the Western Spadefoot**

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the northern DPS and southern DPS of the western spadefoot and its habitat. Below we summarize our assessment of the current and future status of each DPS of the western spadefoot under the Act.

*Northern DPS of the Western Spadefoot: Status Throughout All of Its Range*

In our analysis of the northern DPS's current status, we identified threats acting on the DPS to varying degrees, including impacts from development and urbanization (factor A), agricultural land conversion (factor A), chemical contaminants (factor E), nonnative predators (factor C), wildfire (factor A), noise disturbance (factor E), and the effects associated with climate change (most notably drought) (factor E). Of these threats, we identified habitat loss and degradation from urbanization (factor A) and the effects of climate change (factor E) mostly associated with severe drought as the major influences driving the current condition of the northern DPS of the western spadefoot.

Currently, the latent effects and current impacts from urbanization and other land conversion have resulted in a reduction, fragmentation, and degradation of the northern DPS's habitat (both upland and aquatic), thereby reducing connectivity between occupied areas and isolating populations. Aquatic habitat used for breeding, reproduction, and rearing has been impacted by severe multi-year drought conditions across the DPS's range and has limited breeding opportunities, and most likely contributed to the limited number of breeders estimated for the DPS. After evaluating threats to the northern DPS of the western spadefoot and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have determined that overall viability of the DPS has declined from historical levels.

However, we find that currently the DPS: (1) maintains populations with sufficient resiliency to be able to withstand the environmental or demographic stochastic events currently impacting the DPS; (2) maintains sufficient redundancy to withstand the catastrophic impacts it is facing such as the effects of climate change associated with drought; and (3) maintains sufficient representation based on the breadth of its populations occurring in the variable and unique habitats where it is currently known to occur, thereby maintaining the breadth of environmental diversity within or between populations.

The current viability of the DPS is based on (1) number and distribution of populations currently extant; (2) the amount, distribution, and quality of habitat currently available and used by populations of the DPS; (3) the current ability of the DPS to maintain its populations despite the existing threats; (4) and the amount of management, protections, and conservation currently afforded to the DPS through existing HCPs and INRMPs on military lands that have identified the western spadefoot or its habitat for conservation.

Although we have concluded that impacts resulting from present-day threats are currently negatively affecting the northern DPS of the western spadefoot, the DPS still has a sufficient

degree of resiliency, redundancy, and representation. As such, after assessing the best available information, we conclude that the northern DPS of the western spadefoot is not currently in danger of extinction.

The main driving threats of increased frequency, magnitude, and duration of drought and latent and cumulative impacts of habitat loss (*i.e.,* fragmentation, isolation, degradation) are expected to negatively affect the DPS into the future. Effects of climate change (drought, increased temperatures) are projected to increase across all three future scenarios in the next 30–40 years, affecting the DPS's aquatic habitat and its ability breed and reproduce, resulting in additional reductions in population size. More frequent, extended drought periods may be beyond the life expectancy of adults. This would lead to reductions in population sizes and may extirpate smaller populations or those occupying degraded or fragmented habitat. In the future, human population growth and the effects of urbanization are expected to continue and would further fragment and degrade habitat, reduce population connectivity, and result in additional population declines across the range of the DPS. Reductions in resiliency and extirpation of populations of the northern DPS of the western spadefoot would result in fewer populations to maintain redundancy, compromising the DPS's ability to withstand catastrophic events. The loss of individuals and populations may also result in a decline of genetic diversity or occupancy in the variable ecological settings where it currently occurs, reducing representation of the northern DPS of the western spadefoot into the future.

After evaluating threats to the northern DPS of the western spadefoot and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, as well as considering the conservation efforts currently in place, we find that populations of the northern DPS of the western spadefoot will continue to decline over the next 30–40 years such that the northern DPS is likely to become in danger of extinction throughout all of its range within the foreseeable future due to increased frequency, intensity, and duration of drought conditions and impacts from continued human development, urbanization, and land use conversion. Thus, after assessing the best information available, we determine that the northern DPS of the western spadefoot is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

*Northern DPS of the Western Spadefoot: Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (hereafter ''Final Policy''; 79 FR 37578, July 1, 2014) that provided if the Services determine that a species is threatened throughout all of its range, the Services will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the DPS is endangered in a significant portion of its range—that is, whether there is any portion of the DPS's range for which both (1) the portion is significant; and (2) the DPS is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the DPS's range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the DPS's range where the DPS is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the northern DPS of the western spadefoot, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the DPS and the threats that the DPS faces to identify any portions of the range where the DPS may be endangered.

We evaluated the range of the northern DPS of the western spadefoot to determine if the DPS is in danger of extinction now in any portion of its range. The range of a DPS can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the DPS's range that may meet the definition of an endangered species. For the northern DPS of the western spadefoot, we considered whether the threats or their effects on the DPS are greater in any biologically meaningful portion of the DPS's range than in other portions such that the DPS is in danger of extinction now in that portion.

We examined the following threats: habitat loss, degradation, fragmentation, and isolation; nonnative species impacts (predation and competition); and the effect associated with climate change (increased temperature and severe drought), including cumulative effects. The impacts of these threats have affected and continue to impact the northern DPS of the western spadefoot across it range. Past habitat loss due to wetland and upland losses from urbanization and land conversion for agricultural purposes has occurred uniformly throughout the range of the DPS. The remaining areas where the habitat remains and the DPS occurs are limited to isolated and disjunct fragments of a once interconnected and expansive ecosystem. Current impacts from urbanization and agricultural land conversion are still occurring but have decreased in extent and magnitude from the conversions that occurred through at least the mid-twentieth century. However, the latent effects from historical losses such as population isolation, habitat fragmentation, and loss of representation and redundancy continue to affect the DPS across its range. This situation is reflected by the DPS's current distribution and occupancy in remnant grassland areas in the Sacramento and San Joaquin Valleys and within low-elevation foothill areas of the Sierra Nevada Mountains and Central Coast Range.

In our analysis of the current resiliency of the 10 regions for the northern DPS of the western spadefoot, the Solano-Colusa Region had the lowest resiliency score and was the only region to also have a low habitat quantity/distribution score. In a review of the other 9 regions, 8 of 9 regions had high habitat quantity/distribution scores with 1 region having a moderate habitat quantity/distribution score. We determined regions with high or moderate habitat quantity/distribution scores to be able to currently provide sufficient opportunities for the DPS to meet its life history needs and therefore withstand stochastic and catastrophic events. As a result, we further reviewed the DPS's occurrence and habitat conditions in the Solano-Colusa Region to determine if the region may have a different status than the rest of the regions.

The number of western spadefoot records in the Solano-Colusa Region is limited to 10 records (CNDDB 2023, entire) and mostly occur within natural

grassland or low elevation foothills between the Coast Range and Sacramento Valley in northern Yolo and southern Colusa County west of Interstate 5 and the town of Dunnigan, California. The habitat surrounding most of the records is made up of agricultural croplands, but other records do occur surrounding the area in natural grassland habitat. The records are relatively recent (1990 to 2019) and are associated with ephemeral creeks, artificially ponded livestock ponds, and natural intermittently ponded habitat in the rolling grassland and oak woodland habitat (CNDDB 2023, entire). The California tiger salamander also co-occurs with the northern DPS in this concentrated area and records have been found in a similar timeframe (1990 to 2017) (CNDDB 2023, entire). California tiger salamanders have similar life history and habitat requirements as the northern DPS of the western spadefoot. The California tiger salamander is a covered species within the Yolo HCP/NCCP which has identified the area for conservation by protecting 2,000 ac (809 ha) of upland habitat and approximately 36 ac (15 ha) of aquatic habitat in the area. Additional conservation measures include the requirement of some State and local projects occurring in any identified conservation areas would require a biological impact assessment before implementation, mitigation of impacts from activities, restoration and management of habitat, and implementation of a survey and monitoring program (Yolo Habitat Conservancy 2018, pp. ES–21, ES–22, and 3–18, 3–19). Although the habitat requirements of the California tiger salamander and the northern DPS are not exact and threats acting on them may impact each entity differently, preservation and management of both aquatic and upland habitat will benefit the northern DPS of the western spadefoot in the Solano-Colusa Region.

In our analysis of the current condition of populations and resiliency in the SSA report, we looked to the number of populations and their distribution and the percentage of grassland habitat surrounding each population (Service 2023, pp. 34–38). Given the low number of records, their distribution in mostly two populations, and the area mostly surrounded by agricultural lands, we identified the habitat factors for the region to be low. However, after considering the information above regarding occupancy over time and the conservation measures in place for both aquatic and upland habitat being used by the northern DPS, we have determined that the northern DPS in the Solano-Colusa Region has sufficient resiliency, redundancy, and representation to currently maintain populations in the wild.

Although within the Solano-Colusa Region, the biological condition of the DPS differs from its condition elsewhere in its range, the best scientific and commercial information available do not indicate that the threats, or the species' responses to the threats, are such that the northern DPS of the western spadefoot is currently in danger of extinction in the identified portion. Based on the discussion outlined above, we find that the Solano-Colusa portion of the northern DPS is not in danger of extinction now.

Therefore, no portion of the northern DPS of the western spadefoot's range provides a basis for determining that the DPS is in danger of extinction in a significant portion of its range, and we determine that the DPS is likely to become in danger of extinction within the foreseeable future throughout all of its range. This determination does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

*Northern DPS of the Western Spadefoot: Determination of Status*

Our review of the best scientific and commercial information available indicates that the northern DPS of the western spadefoot meets the definition of a threatened species. Therefore, we propose to list the northern DPS of the western spadefoot as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

*Southern DPS of the Western Spadefoot: Status Throughout All of Its Range*

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the southern DPS of the western spadefoot and its habitat. Below we summarize our assessment of the current and future status of the southern DPS of the western spadefoot under the Act.

As stated above, some populations of the southern DPS of the western spadefoot have been fragmented and are isolated and are most likely small with a limited number of effective breeders. However, our analysis of the current condition of the southern DPS of the western spadefoot, as assessed in the SSA report, shows that populations of the DPS are well distributed with multiple populations across all the ecological settings within the DPS's range. While threats are currently acting on the DPS at the individual level and many of those threats are expected to continue into the future, the main driving threats of habitat loss and the effects of climate change are not currently impacting the DPS as a whole across its range to the level to cause the DPS to not be able to sustain populations in the wild in the near term. The quality and distribution of occupied habitat for the southern DPS of the western spadefoot is considered high and we have determined that it will be able to support populations and withstand habitat loss impacts due to large areas being protected through HCPs and INRMPs and environmental impacts, including impacts from drought at least in the near term. This is reflected by the DPS's current distribution and occupancy across more than 300 local populations despite previous long term and severe drought conditions. As a result, we do not find that the southern DPS of the western spadefoot is currently in danger of extinction throughout all of its range.

In the future, we would expect the latent impacts of habitat loss to continue and the effects of climate change associated with drought to increase. Effects of climate change in the future (drought, increased temperatures) are projected to increase across all three future scenarios in the next 30–40 years, affecting the DPS's aquatic habitat and its ability breed and reproduce, resulting in additional reductions in population size. More frequent, extended drought periods may be beyond the life expectancy of adults. This would lead to reductions in population sizes and may extirpate smaller populations or those occupying degraded or fragmented habitat. In the future, we would expect the impacts from largescale habitat loss due to urbanization or other land use conversion to be diminished due to conservation efforts associated with HCPs and INRMPs. However, we expect the effects of climate change associated with drought to increase. Reductions in resiliency and/or extirpation of populations of the southern DPS of the western spadefoot would result in fewer populations to maintain redundancy, compromising the DPS's ability to withstand catastrophic events. The loss of populations may also result in a decline of genetic diversity or

occupancy in the variable ecological settings where it currently occurs, reducing representation of the southern DPS of the western spadefoot into the future.

After evaluating threats to the southern DPS of the western spadefoot and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, as well as considering the conservation efforts currently in place, we find that populations of the southern DPS of the western spadefoot will continue to decline over the next 30–40 years such that the southern DPS is likely to become in danger of extinction throughout all of its range within the foreseeable future due to increased frequency, intensity, and duration of drought conditions and impacts from the past effects of development, urbanization, and land use conversion. Thus, after assessing the best information available, we determine that the southern DPS of the western spadefoot is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

*Southern DPS of the Western Spadefoot: Status Throughout a Significant Portion of Its Range*

Having determined that the southern DPS of the western spadefoot is not currently in danger of extinction but likely to become so in the foreseeable future throughout all of its range, we now consider whether any significant portion of the southern DPSs range may be in danger of extinction—that is, whether there is any portion of the DPS's range for which it is true that both (1) the portion is significant; and (2) the DPS is in danger of extinction now in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the DPS's range.

In undertaking this analysis for the southern DPS of the western spadefoot, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the DPS and the threats that the DPS faces to identify any portions of the range where the DPS may be endangered.

We evaluated the range of the southern DPS of the western spadefoot to determine if the DPS is in danger of extinction now in any portion of its range. The range of a DPS can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the DPS's range that may meet the definition of an endangered species. For the southern DPS of the western spadefoot, we considered whether the threats or their effects on the DPS are greater in any biologically meaningful portion of the DPS's range than in other portions such that the DPS is in danger of extinction now in that portion.

For the southern DPS of the western spadefoot, we examined the following threats: habitat loss, degradation, fragmentation, and isolation; nonnative species impacts (predation and competition); and the effect associated with climate change (increased temperature and severe drought), including cumulative effects. The impacts of these threats have and continue to impact the southern DPS of the western spadefoot across its range. Past habitat loss due to wetland and upland losses from urbanization and land conversion for agricultural purposes has occurred uniformly throughout the range of the DPS. The remaining areas where habitat remains and the DPS occurs are smaller in size and distribution, but still well distributed and often in clusters within dispersal distance of the DPS.

In our analysis, we identified 7 regions having low-moderate and 1 region having low, and 2 regions within unknown overall resiliency. The two regions with unknown resiliency (Baja Central and Baja South) as well as the region with low resiliency (Baja Northwest) occur in Baja California, Mexico. Information on the exact population distribution and habitat for these areas is mostly lacking and our assessment of the southern DPS in these areas is mostly limited to occurrence information and a review of the areas they are found. Recent survey information has identified numerous occurrence records that are well distributed throughout the DPS's range in Baja California and the limited review of habitat conditions associated with these records shows that the majority of records are in areas associated with grassland or shrub/scrub habitat. Based on the best available information, we find that the habitat quantity and distribution within the Baja Northwest Region is high. Considering this and the recent occurrence records bolstering our knowledge of the distribution and occupancy of the DPS in these 3 regions, we do not consider the biological condition of the DPS to differ from its condition elsewhere in its range. As a result, the best scientific and commercial information available do not indicate that the threats, or the DPS's response to the threats, are such that the southern DPS of the western spadefoot is currently in danger of extinction in the identified portions. Based on the discussion outlined above, we find that the DPS is not in danger of extinction now in the 3 identified regions.

Despite historical and current threats to the southern DPS of the western spadefoot, the southern DPS continues to maintain its distribution and extent throughout its range in the various ecological settings known for the DPS. In addition, many of these areas currently have substantial in-place and ongoing conservation and management to assist in protecting, conserving, and maintaining habitat availability, distribution, and quality for the southern DPS.

As a result, we found no biologically meaningful portion of the southern DPS of the western spadefoot's range where threats are impacting individuals differently from how they are affecting the DPS elsewhere in its range, or where the biological condition of the DPS differs from its current condition elsewhere in its range such that the status of the DPS in that portion differs from any other portion of the DPS's range.

Therefore, we find that the species is not in danger of extinction now in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of ''significant'' that those court decisions held to be invalid.

*Southern DPS of the Western Spadefoot: Determination of Status*

Our review of the best scientific and commercial information available indicates that the southern DPS of the western spadefoot meets the definition of a threatened species. Therefore, we propose to list the southern DPS of the western spadefoot as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of

recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process consists of preparing draft and final recovery plans, beginning with the development of a recovery outline. However, because the western spadefoot has already been included in the Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon (Service 2005, entire), providing an outline and planning and drafting a plan is not necessary. The recovery plan uses an ecosystem approach on protecting and conserving vernal pool ecosystems and identifies goals, objectives, strategies, and criteria for conserving vernal pool species and their habitat and prioritizes certain tasks or measures in core areas and areas outside of those areas. The specific criteria for western spadefoot to be considered conserved is when 80 percent of the occurrences of the species are protected and 85 percent of the habitat within 11 of 15 vernal pool regions where it occurs is also protected. In reviewing the criteria for western spadefoot conservation in the recovery plan (Service 2005, pp. III–87—III–112), we have determined that these criteria have not been met to date. The final recovery plan is available on our website (*http://www.fws.gov/endangered*), or from our Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

As stated above, the western spadefoot has already been included in the Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon (Service 2005, entire) and conservation measures have been identified for the species and its habitat. As a result, funding for conservation actions will continue to be available for both the northern DPS and southern DPS of the western spadefoot from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of California would be eligible for Federal funds to implement survey and monitoring actions for the western spadefoot and implement conservation actions identified in the State's Wildlife Action Plan funded through State Wildlife Grants for the western spadefoot as the species is considered a species of greatest conservation need by the State. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/grants.* We invite you to submit any new information on the northern DPS or southern DPS of the western spadefoot whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which *is likely* to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2).

Examples of actions that may be subject to the conference and consultation procedures under section 7 processes are land management or other landscape-altering activities on Federal lands administered by the Bureau of Land Management, Department of Defense, U.S. Fish and Wildlife Service, U.S. Forest Service, and National Park Service as well as actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION**

**CONTACT**) with any specific questions on section 7 consultation and conference requirements.

It is the policy of the Services, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the extent known at the time a species is listed, specific activities that will not be considered likely to result in violation of section 9 of the Act. To the extent possible, activities that will be considered likely to result in violation will also be identified in as specific a manner as possible. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. Although most of the prohibitions in section 9 of the Act apply to endangered species, sections 9(a)(1)(G) and 9(a)(2)(E) of the Act prohibit the violation of any regulation under section 4(d) pertaining to any threatened species of fish or wildlife, or threatened species of plant, respectively. Section 4(d) of the Act directs the Secretary to promulgate protective regulations that are necessary and advisable for the conservation of threatened species. As a result, we interpret our policy to mean that, when we list a species as a threatened species, to the extent possible, we identify activities that will or will not be considered likely to result in violation of the protective regulations under section 4(d) for that species.

At this time, we are unable to identify specific activities that will or will not be considered likely to result in violation of section 9 of the Act beyond what is already clear from the descriptions of prohibitions and exceptions established by protective regulation under section 4(d) of the Act.

Questions regarding whether specific activities would constitute violation of section 9 of the Act should be directed to the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

## II. Proposed Rule Issued Under Section 4(d) of the Act for the Northern DPS and Southern DPS of the Western Spadefoot

### Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language similar to the language in section 4(d) of the Act authorizing the Secretary to take action that she ''deems necessary and advisable'' affords a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592, 600 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting one or more of the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this proposed 4(d) rule would promote conservation of the northern DPS and southern DPS of the western spadefoot by encouraging management of the habitat for the DPSs in ways that would facilitate their conservation. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of the northern DPS and southern DPS of the western spadefoot. This proposed 4(d) rule would apply only if and when we make final the listing of the northern DPS and southern DPS of the western spadefoot as threatened DPSs.

As mentioned previously in Available Conservation Measures, section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, even before the listing of any species or the designation of its critical habitat is finalized, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species.

These requirements are the same for a threatened species with a species-specific 4(d) rule. For example, as with an endangered species, if a Federal agency determines that an action is ''not likely to adversely affect'' a threatened species, it will require the Service's written concurrence (50 CFR 402.13(c)). Similarly, if a Federal agency determinates that an action is ''likely to adversely affect'' a threatened species, the action will require formal consultation with the Service and the formulation of a biological opinion (50 CFR 402.14(a)).

### Provisions of the Proposed 4(d) Rule for the Northern DPS and Southern DPS of the Western Spadefoot

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a proposed rule that is designed to address the northern DPS and southern DPS of the western spadefoot's conservation needs. As discussed previously in Summary of Biological Status and Threats, we have concluded that the two DPSs are likely to become in danger of extinction within the foreseeable future primarily due to impacts to habitat and the effects of climate change. Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(1) of the Act prescribes for endangered species. We find that, if finalized, the protections, prohibitions, and

exceptions in this proposed rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the northern DPS and southern DPS of the western spadefoot.

The protective regulations we are proposing for the northern DPS and southern DPS of the western spadefoot incorporate prohibitions from section 9(a)(1) of the Act to address the threats to the two DPSs. Section 9(a)(1) prohibits the following activities for endangered wildlife: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce. This protective regulation includes all these prohibitions because the northern DPS and southern DPS of the western spadefoot are at risk of extinction in the foreseeable future and putting these prohibitions in place will help to prevent further declines, preserve the two DPS's remaining populations, slow their rate of decline, and decrease the cumulative negative effects from other ongoing or future threats.

In particular, this proposed 4(d) rule would provide for the conservation of the northern DPS and southern DPS of the western spadefoot by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: importing or exporting; take; possession and other acts with unlawfully taken specimens; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulations at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Regulating take would help preserve the DPS's remaining populations, slow their rate of decline, and decrease cumulative effects from other ongoing or future threats. Therefore, we propose to prohibit take of the northern DPS and southern DPS of the western spadefoot, except for take resulting from those actions and activities specifically excepted by the 4(d) rule.

Exceptions to the prohibition on take would include all the general exceptions to the prohibition on take of endangered wildlife as set forth in 50 CFR 17.21 and additional exceptions, as described below.

The proposed 4(d) rule would also provide for the conservation of the northern DPS and southern DPS of the western spadefoot by allowing exceptions that incentivize conservation actions or that, while they may have some minimal level of take of the two DPSs, are not expected to rise to the level that would have a negative impact (*i.e.,* would have only de minimis impacts) on either of the DPS's conservation. The proposed exceptions to these prohibitions include (1) activities associated with routine livestock ranching on private lands that provide and maintain breeding and upland habitats and maintain stock ponds; (2) implementation of livestock grazing as a tool in the course of vegetation management and to benefit the northern DPS or southern DPS of the western spadefoot in vernal pool landscapes; (3) landowner actions to maintain the minimum clearance of vegetation (defensible space) requirement of 100 feet (30 meters) from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and to reduce wildfire risks to breeding and upland habitats of the western spadefoot and consistent with the State of California fire codes or local fire codes/ordinances; and (4) wildfire management actions (*e.g.,* prescribed burns, hazardous fuel reduction activities, and maintenance of fuel breaks) to maintain, protect, or enhance habitat occupied by the northern DPS or southern DPS of the western spadefoot. These exceptions as discussed below are expected to have negligible or beneficial impacts to the northern DPS and southern DPS of the western spadefoot and its habitat.

Routine livestock ranching activities, such as those conducted in California's lower elevation foothill regions within the range of the northern DPS or southern DPS of the western spadefoot provide a substantial conservation benefit to the two DPSs. The conservation benefits provided by routine ranching activities include the establishment and maintenance of stock ponds that are often aquatic habitat for breeding and rearing of western spadefoot larvae and juveniles. The grazing of uplands by these ranching operations maintains grass and shrubland habitat from becoming overgrown and assists in adult western spadefoot's establishment of burrows, provides access to better foraging opportunities, and allows for better movement and dispersal. Grazing operations not following standard best management practices for rangeland grazing practices to avoid overgrazing would not be part of this exception. By providing this exception, we are assisting in maintaining these ranching activities (and their benefits to the northern and southern DPSs of the western spadefoot) and avoiding potential conversion of these lands to incompatible uses such as urban development or agriculture.

Implementing livestock grazing as a management tool to reduce nonnative annual vegetation in areas associated with vernal pools assists in maintaining the aquatic habitat and provides breeding and rearing opportunities to the northern DPS and southern DPS of the western spadefoot. Nonnative annual vegetation or overabundance of vegetation can degrade vernal pool habitat by intrusion into the ponded areas or cause shortening of the hydroperiod of the pools. Small remnant vernal pool areas used by the two DPSs are usually degraded or altered and may have a shortened inundation period or provide limited upland habitat, thereby not providing for the needs of the two DPSs. Removal and maintenance of excessive vegetation may assist these smaller vernal pool areas to continue to be productive and be used as breeding habitat for the two DPSs.

In certain areas the use of fire and wildfire management such as prescribed burns, fuel reduction activities, and maintenance of fuel breaks (does not include use of heavy equipment such as bulldozers, backhoes, or tractors) may assist in protecting and maintaining habitat for the northern DPS or southern DPS of the western spadefoot. Similar to livestock grazing, prescribed fire actions and fuel reduction activities (vegetation removal), conducted outside the species' active period, remove excessive vegetation and allow for maintenance of ponded habitat and better access for the two DPSs to upland areas.

Establishing and maintaining required minimum vegetation clearance from dwellings or structures to reduce wildland fire risks to human life and property may assist in protecting and maintaining habitat for the northern DPS and southern DPS of the western spadefoot. This process includes activities necessary to maintain the minimum clearance (defensible space) requirement from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and to

reduce wildfire risks consistent with the State of California fire codes or local fire codes/ordinances.

We find that the actions discussed above, taken by management entities in the range of the northern DPS and southern DPS of the western spadefoot for the purpose of reducing the risk or severity of habitat degradation and designed to maintain or restore open habitat for the species, will further the goal of reducing the likelihood of the two DPSs from becoming endangered species and will also continue to contribute to their conservation and long-term viability. We therefore establish that the prohibitions under section 4(d) of the Act for the protection of these two DPSs do not apply to such actions.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened wildlife state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species including permits issued for scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act (50 CFR 17.32). The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist us in implementing all aspects of the Act. In this regard, section 6 of the Act provides that we must cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with us in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would, without additional authorization, be able to conduct activities that are designed to conserve the northern DPS or southern DPS of the western spadefoot and that may result in otherwise prohibited take.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or our ability to enter into partnerships for the management and protection of the northern DPS or southern DPS of the western spadefoot. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between us and other Federal agencies, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that we could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

## III. Critical Habitat for the Northern DPS and Southern DPS of the Western Spadefoot

### Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the

extent known using the best scientific data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the proposed 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

## Critical Habitat Determinability

Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

We reviewed the available information pertaining to the biological needs of the northern DPS and southern DPS of the western spadefoot and habitat characteristics where the two DPSs are located. A careful assessment of the economic impacts that may occur due to a critical habitat designation is still ongoing, and we are in the process of working with our Federal partners, Tribes, and State and other partners in acquiring the complex information needed to perform that assessment. Therefore, due to the current lack of data sufficient to perform required analyses, we conclude that the designation of critical habitat for the northern DPS and southern DPS of the western spadefoot is not determinable at this time. The Act allows the Service an additional year to publish a critical habitat designation that is not determinable at the time of listing (16 U.S.C. 1533(b)(6)(C)(ii)).

## Required Determinations

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g., Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government

basis. In accordance with Secretaries' Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We contacted all federally recognized Tribes in the range of the western spadefoot during the initiation of our SSA development process and had coordination meetings with several Tribes on the timing and opportunities for input into our listing process. We will continue to work with Tribal entities during the development of a final listing rule and for the designation of critical habitat for the northern DPS and southern DPS of the western spadefoot.

**References Cited**

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Carlsbad, Sacramento, and Ventura Fish and Wildlife Offices.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

≤**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, amend paragraph (h) by adding an entry for ''Spadefoot, Western [Northern DPS]'' and ''Spadefoot, Western [Southern DPS]'' to the List of Endangered and Threatened Wildlife in alphabetical order under AMPHIBIANS to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Common name | Scientific name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| * | * | * | * | * |
| AMPHIBIANS | | | | |
| * | * | * | * | * |
| Spadefoot, Western [Northern DPS]. | *Spea hammondii* | U.S.A. (northern CA) | T | [**Federal Register** citation when published as a final rule]; 50 CFR 17.43(i); [4d] |
| Spadefoot, Western [Southern DPS]. | *Spea hammondii* | U.S.A. (southern CA), Mexico (Baja California). | T | [**Federal Register** citation when published as a final rule]; 50 CFR 17.43(i); [4d] |
| * | * | * | * | * |

■ 3. Amend § 17.43 by adding paragraph (i) to read as follows:

**§ 17.43 Special rules—amphibians.**

* * * * *

(i) Western spadefoot (*Spea hammondii*), northern distinct population segment (DPS) and Western spadefoot (Spea hammondii), southern DPS.

(1) *Location.* The northern DPS and southern DPS of the western spadefoot are shown on the map that follows:

**Figure 1 to Paragraph (i)(1)**

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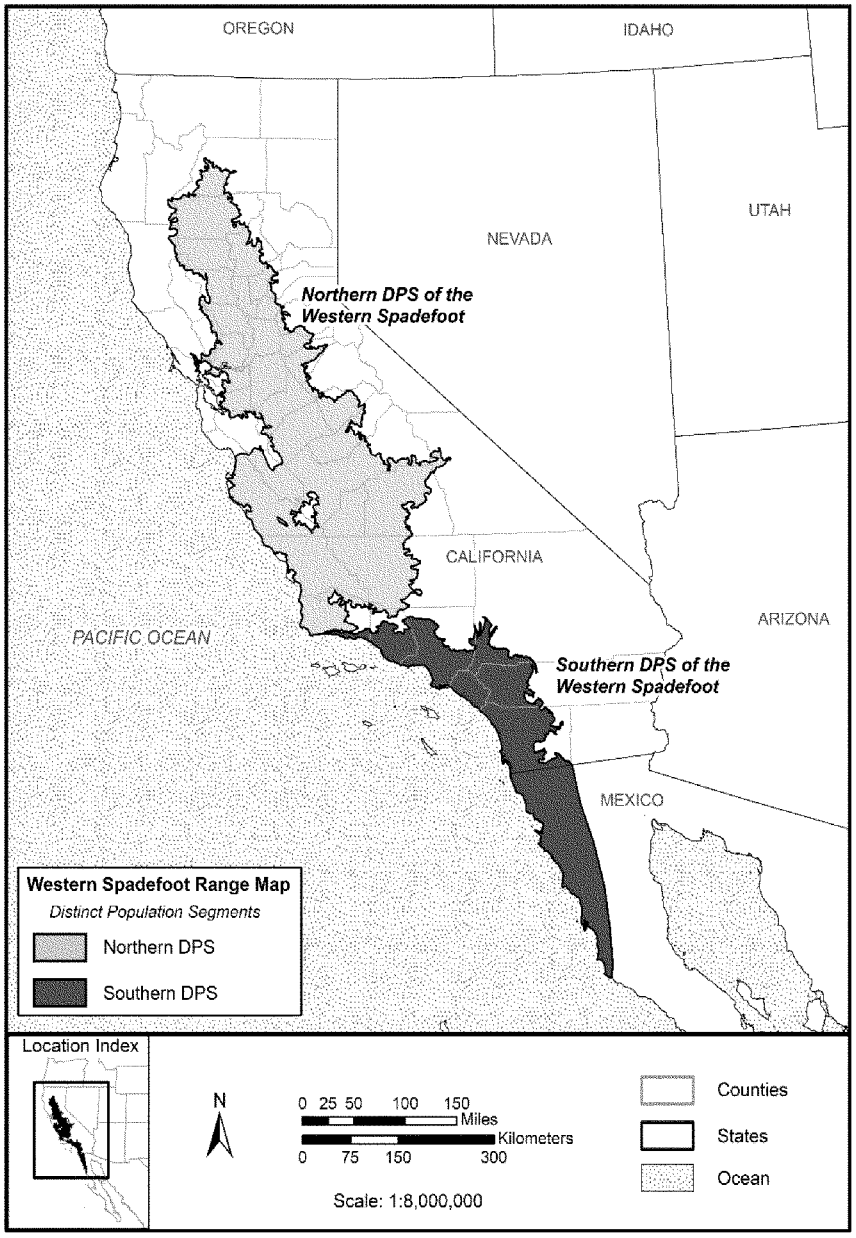


BILLING CODE 4333–15–C

(2) *Prohibitions.* The following prohibitions that apply to endangered wildlife also apply to the northern DPS of the western spadefoot and southern DPS of the western spadefoot. Except as provided under paragraph (i)(3) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to these DPSs:

(i) Import or export, as set forth at § 17.21(b) for endangered wildlife.

(ii) Take, as set forth at § 17.21(c)(1) for endangered wildlife.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1) for endangered wildlife.

(iv) Interstate or foreign commerce in the course of a commercial activity, as set forth at § 17.21(e) for endangered wildlife.

(v) Sale or offer for sale, as set forth at § 17.21(f) for endangered wildlife.

(3) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.32.

(ii) Take, as set forth at § 17.21(c)(2) through (4) for endangered wildlife.

(iii) Take as set forth at § 17.31(b).

(iv) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

(v) Take incidental to an otherwise lawful activity caused by:

(A) Activities associated with routine livestock ranching on private lands that provide and maintain breeding and upland habitats and maintain stock ponds.

(B) Implementation of livestock grazing as a tool in the course of vegetation management and to benefit the northern DPS and southern DPS of the western spadefoot in vernal pool landscapes.

(C) Landowner actions to maintain the minimum clearance of vegetation (defensible space) requirement of 100 feet (30 meters) from any occupied dwelling, occupied structure, or to the property line, whichever is nearer, to provide reasonable fire safety and to

reduce wildfire risks to breeding and upland habitats of the northern DPS and southern DPS of the western spadefoot and consistent with the State of California fire codes or local fire codes/ordinances.

(D) Fire management actions (*e.g.,* prescribed burns, hazardous fuel reduction activities, and maintenance of fuel breaks) to maintain, protect, or enhance habitat occupied by the northern DPS and southern DPS of the western spadefoot.

* * * * *

**Martha Williams,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2023–26579 Filed 12–4–23; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 231130–0283; RTID 0648–XD454]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2024 and 2025 Harvest Specifications for Groundfish

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

**ACTION:** Proposed rule; harvest specifications and request for comments.

**SUMMARY:** NMFS proposes 2024 and 2025 harvest specifications, apportionments, and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to establish harvest limits for groundfish during the 2024 and 2025 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The 2024 harvest specifications supersede those previously set in the final 2023 and 2024 harvest specifications, and the 2025 harvest specifications will be superseded in early 2025 when the final 2025 and 2026 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received by January 4, 2024.

**ADDRESSES:** Submit your comments, identified by NOAA–NMFS–2023–0124, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0124 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record, and NMFS will post the comments 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 is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Electronic copies of the Alaska Groundfish Harvest Specifications Final Environmental Impact Statement (Final EIS), Record of Decision (ROD) for the Final EIS, and the annual Supplementary Information Reports (SIR) to the Final EIS prepared for this action are available from *https://www.regulations.gov.* An updated 2024 SIR for the final 2024 and 2025 harvest specifications will be available from the same source. The final 2022 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2022, is available from the North Pacific Fishery Management Council (Council) at 1007 West 3rd Ave., Suite 400, Anchorage, Alaska 99501, phone 907–271–2809, or from the Council's website at *https://www.npfmc.org/.* The 2023 SAFE report for the BSAI will be available from the same source.

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

**SUPPLEMENTARY INFORMATION:**

### Background

Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it, pursuant to the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require that NMFS, after consultation with the North Pacific Fishery Management Council (Council), specify annually the total allowable catch (TAC) for each target species category. The sum of TACs for all groundfish species in the BSAI must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (see §§ 679.20(a)(1)(i)(A) and 679.20(a)(2)). Section 679.20(c)(1) further requires that NMFS publish proposed harvest specifications in the **Federal Register** and solicit public comments on proposed annual TACs for each target species and apportionments thereof; prohibited species catch (PSC) allowances; prohibited species quota (PSQ) reserves established by § 679.21; seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC; American Fisheries Act allocations; Amendment 80 allocations; Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii); and acceptable biological catch (ABC) surpluses and reserves for CDQ groups and Amendment 80 cooperatives for flathead sole, rock sole, and yellowfin sole. The proposed harvest specifications set forth in Tables 1–16 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final 2024 and 2025 harvest specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2023 meeting, (3) considering information presented in the 2024 SIR to the Final EIS that assesses the need to prepare a Supplemental EIS (see **ADDRESSES**), and (4) considering information presented in the final 2023 SAFE report prepared for the 2024 and 2025 groundfish fisheries.

### Other Actions Affecting or Potentially Affecting the 2024 and 2025 Harvest Specifications

*Halibut Abundance-Based Management for the Amendment 80 Program PSC Limit*

On December 9, 2022, NMFS published a proposed rule associated with Amendment 123 to the FMP (87 FR 75570), which would establish abundance-based management of

Amendment 80 Program PSC for Pacific halibut. Upon publication of the final rule associated with Amendment 123 (publication is pending in November 2023), the regulations implementing Amendment 123 will replace the current Amendment 80 sector static halibut PSC limit (1,745 mt) with a process for annually setting the Amendment 80 sector halibut PSC limit based on the most recent halibut abundance estimates from the International Pacific Halibut Commission (IPHC) setline survey index and the NMFS Alaska Fisheries Science Center (AFSC) Eastern Bering Sea shelf trawl survey index. The annual process uses a table with pre-established halibut abundance ranges from those surveys. The annual Amendment 80 sector halibut PSC limit will be set at the value found at the intercept of the results from the most recent survey indices. NMFS will calculate the Amendment 80 sector halibut PSC limit, as well as the total halibut PSC limit, in the final 2024 and 2025 harvest specifications.

*Pacific Cod Trawl Cooperative Limited Access Privilege Program*

On August 8, 2023, NMFS published a final rule to implement Amendment 122 to the FMP (88 FR 53704, effective September 7, 2023) (see also a correction published at 88 FR 57009, August 22, 2023). The final rule establishes a limited access privilege program called the Pacific Cod Trawl Cooperative (PCTC) Program. The PCTC Program allocates Pacific cod quota share (QS) to groundfish License Limitation Program license holders and to processors based on history during the qualifying years. Under this program, QS holders are required to join cooperatives annually. Cooperatives are allocated the BSAI trawl catcher vessel sector's A and B seasons Pacific cod allocation as an exclusive harvest privilege in the form of cooperative quota, equivalent to the aggregate QS of all cooperative members. Amendment 122 also reduces the halibut and crab PSC limits for the BSAI trawl catcher vessel (CV) Pacific cod fishery.

Accordingly, Amendment 122 and its implementing regulations affect the calculation of the BSAI trawl CV sector allocation of Pacific cod (discussed in a subsequent section of this rule titled *Allocation of the Pacific Cod TAC*) and the BSAI trawl limited access sector crab and halibut PSC limits (discussed in a subsequent section of this rule titled *Proposed PSC Limits for Halibut, Salmon, Crab, and Herring*). Amendment 122 also removed the regulations at § 679.20(a)(7)(viii) for Amendment 113 to the FMP because the U.S. District Court for the District of Columbia vacated the rule implementing Amendment 113 (*Groundfish Forum* v. *Ross,* 375 F.Supp.3d 72 (D.D.C. 2019)).

*State of Alaska Guideline Harvest Levels*

For 2024 and 2025, the Board of Fisheries (BOF) for the State of Alaska (State) established the guideline harvest level (GHL) for vessels using pot, longline, jig, and hand troll gear in State waters in the State's Aleutian Islands subarea (AI) State-waters sablefish registration area that includes all State waters west of Scotch Cap Light (164°44.72′ W longitude) and south of Cape Sarichef (54°36′ N latitude). The 2024 AI GHL is set at 5 percent of the combined proposed 2024 Bering Sea (BS) subarea and AI ABC (1,025 mt). The State's AI sablefish registration area includes areas adjacent to parts of the Federal BS subarea. Since most of the State's 2024 and 2025 GHL sablefish fishery is expected to occur in State waters adjacent to the Federal BS subarea, the Council and its BSAI Groundfish Plan Team (Plan Team), Scientific and Statistical Committee (SSC), and Advisory Panel (AP) recommended that the sum of all State and Federal sablefish removals from the BS and AI not exceed the proposed ABC recommendations for sablefish in the BS and AI.

Accordingly, the Council recommended, and NMFS proposes, that the 2024 and 2025 sablefish TACs in the BS and AI account for the State's GHLs for sablefish caught in State waters.

For 2024 and 2025, the BOF for the State established the GHL for vessels using pot gear in State waters in the BS equal to 12 percent of the Pacific cod ABC in the BS. The BS GHL will increase by one percent if 90 percent of the GHL is harvested by November 15 of the preceding year for two consecutive years but may not exceed 15 percent of the BS ABC. If 90 percent of the GHL is not harvested by November 15 of the preceding year for two consecutive years, the GHL will decrease by 1 percent, but the GHL may not decrease below 10 percent of the BS ABC. Based on harvest in 2022 and 2023, the GHL likely will remain at 12 percent in 2024. NMFS will account for any adjustment to the GHL in the final 2024 and 2025 harvest specifications. For 2024 and 2025, 12 percent of the proposed BS ABC is 16,819 mt. Also, for 2024 and 2025, the BOF established an additional GHL for vessels using jig gear in State waters in the BS equal to 45 mt of Pacific cod in the BS. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal waters Pacific cod removals from the BS not exceed the ABC recommendations for Pacific cod in the BS. Accordingly, the Council recommended, and NMFS proposes, that the 2024 and 2025 Pacific cod TACs in the BS account for the State's GHLs (total 16,864 mt) for Pacific cod caught in State waters in the BS.

For 2024 and 2025, the BOF for the State established the GHL in State waters in the AI be equal to 39 percent of the AI ABC. The AI GHL will increase annually by 4 percent of the AI ABC if 90 percent of the GHL is harvested by November 15 of the preceding year but may not exceed 39 percent of the AI ABC or 15 million pounds (lbs) (6,804 mt). If 90 percent of the GHL is not harvested by November 15 of the preceding year for two consecutive years, the GHL will decrease by 4 percent, but the GHL may not decrease below 15 percent of the AI ABC. Based on harvest in 2022 and 2023, the GHL likely will decrease to 35 percent in 2024. NMFS will account for any adjustment to the GHL in the final 2024 and 2025 harvest specifications. For 2024 and 2025, 39 percent of the proposed AI ABC is 5,387 mt. The Council and its Plan Team, SSC, and AP recommended that the sum of all State and Federal Pacific cod removals from the AI not exceed the ABC recommendations for Pacific cod in the AI.

Accordingly, the Council recommended, and NMFS proposes, that the 2024 and 2025 Pacific cod TACs in the AI account for the State's GHL for Pacific cod caught in State waters in the AI.

**Proposed ABC and TAC Harvest Specifications**

In October 2023, the Council's SSC, its AP, and the Council reviewed the most recent biological and harvest information on the condition of the BSAI groundfish stocks. The Plan Team compiled and presented this information in the final 2022 SAFE report for the BSAI groundfish fisheries, dated November 2022 (see **ADDRESSES**). The final 2023 SAFE report, including individual stock assessments, will be available from the same source and from *https://www.fisheries.noaa.gov/alaska/population-assessments/north-pacific-groundfish-stock-assessment-and-fishery-evaluation.*

The proposed 2024 and 2025 harvest specifications are based on the final 2024 harvest specifications published in March 2023 (88 FR 14926, March 10, 2023), which were set after consideration of the most recent 2022

SAFE report and are based on the initial survey data that were presented at the September 2023 Plan Team meeting. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters including possible future condition of the stocks, as well as summaries of the available information on the BS and AI ecosystems and the economic condition of the groundfish fisheries off Alaska. The SAFE report provides information to the Council and NMFS for recommending and setting, respectively, annual harvest levels for each stock, documenting significant trends or changes in the resource, marine ecosystems, and fisheries over time, and assessing the relative success of existing Federal fishery management programs. An appendix to the SAFE report is the Ecosystem Status Reports (ESRs). The ESRs compile and summarize information about the status of the Alaska marine ecosystems for the SSC, AP, Council, NMFS, and the public, and they are updated annually. These ESRs include ecosystem report cards, ecosystem assessments, and ecosystem status indicators (*i.e.,* climate indices, sea surface temperature), which together provide context for ecosystem-based fisheries management in Alaska. The ESRs inform stock assessments and are integrated in the annual harvest recommendations through inclusion in stock assessment-specific risk tables. Also, the ESRs provide context for the SSC's recommendations for overfishing levels (OFL) and ABCs, as well as for the Council's TAC recommendations. The SAFE reports and the ESRs are presented at the October and December Council meetings before the SSC, AP, and the Council make groundfish harvest recommendations and aid NMFS in implementing these annual groundfish harvest specifications.

In addition to the 2022 SAFE report, the Plan Team, SSC, and Council also reviewed preliminary survey data from 2023 surveys, updates on ecological and socioeconomic profiles for certain species, and summaries of potential changes to models and methodologies. From these data and analyses, the Plan Team recommends, and the SSC sets, the proposed OFL and ABC for each species and species group. The proposed 2024 and 2025 harvest specifications in this action are subject to change in the final harvest specifications to be published by NMFS following the Council's December 2023 meeting.

In November 2023, the Plan Team will update the 2022 SAFE report to include new information collected during 2023, such as NMFS stock surveys, revised stock assessments, and catch data. The Plan Team will compile this information and present the draft 2023 SAFE report at the December 2023 Council meeting. At that meeting, the SSC and the Council will review the 2023 SAFE report, and the Council will approve the 2023 SAFE report. The Council will consider information in the 2023 SAFE report, recommendations from the November 2023 Plan Team meeting and December 2023 SSC and AP meetings, public testimony, and relevant written comments in making its recommendations for the final 2024 and 2025 harvest specifications. Pursuant to § 679.20(a)(2) and (3), the Council could recommend adjusting the final TACs if warranted based on the biological condition of groundfish stocks or a variety of socioeconomic considerations, or if required to cause the sum of TACs to fall within the OY range.

*Potential Changes Between Proposed and Final Specifications*

In previous years, the most significant changes (relative to the amount of assessed tonnage of fish) to the OFLs and ABCs from the proposed to the final harvest specifications have been based on the most recent NMFS stock surveys. These surveys provide updated estimates of stock biomass and spatial distribution and inform changes to the models or the models' results used for producing stock assessments. Any changes to models used in stock assessments will be recommended by the Plan Team in November 2023, reviewed by the SSC in December 2023, and then included in the final 2023 SAFE report. Model changes can result in changes to final OFLs, ABCs, and TACs. The final 2023 SAFE report will include the most recent information (*e.g.,* catch data).

The final harvest specification amounts for these stocks are not expected to significantly vary from these proposed harvest specification amounts. If the 2023 SAFE report indicates that the stock biomass trend is increasing for a species, then the final 2024 and 2025 harvest specifications may reflect an increase from the proposed harvest specifications. Conversely, if the 2023 SAFE report indicates that the stock biomass trend is decreasing for a species, then the final 2024 and 2025 harvest specifications may reflect a decrease from the proposed harvest specifications. In addition to changes driven by biomass trends, there may be changes in TACs due to the sum of ABCs exceeding 2 million mt. Since the regulations require the sum of all TACs to be set to an OY between 1.4 and 2 million mt, the Council may be required to recommend TACs that are lower than the ABCs recommended by the Plan Team and the SSC, if setting all TACs equal to ABCs would cause the sum of TACs to exceed an OY of 2 million mt. Generally, total ABCs greatly exceed 2 million mt in years with a large pollock biomass. For both 2024 and 2025, NMFS anticipates that the sum of the final ABCs will exceed 2 million mt. Historically, the sum of the final TACs has been close to or equal to 2 million mt.

The proposed 2024 and 2025 OFLs and ABCs are based on the best available biological and scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The FMP specifies a series of six tiers to define OFLs and ABCs based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available, while Tier 6 represents the lowest. The proposed 2024 and 2025 TACs are based on the best available biological and socioeconomic information.

In October 2023, the SSC adopted the proposed 2024 and 2025 OFLs and ABCs recommended by the Plan Team for all groundfish. In making its recommendations, the Council adopted the SSC's OFL and ABC recommendations. The OFL and ABC amounts are unchanged from the final 2024 harvest specifications published in the **Federal Register** on March 10, 2023 (88 FR 14926) (see also a correction at 88 FR 18258, March 28, 2023). The sum of the proposed 2024 and 2025 ABCs for all assessed groundfish is 3,569,366 mt. The sum of the proposed TACs is 2,000,000 mt.

*Specification and Apportionment of TAC Amounts*

The Council recommended proposed 2024 and 2025 TACs that are equal to the proposed ABCs for 2024 and 2025 BS and AI Greenland turbot, BSAI Kamchatka flounder, Central AI Atka mackerel, BS Pacific ocean perch, Central AI Pacific ocean perch, Eastern AI Pacific ocean perch, BS and Eastern AI (BS/EAI) blackspotted and rougheye rockfish, Central AI and Western AI blackspotted and rougheye rockfish, BS and AI shortraker rockfish, and BS and AI ''other rockfish.'' The Council recommended proposed TACs less than the respective proposed ABCs for all other species. TACs for some species are reduced so that the overall TAC does not exceed the BSAI OY.

The proposed groundfish OFLs, ABCs, and TACs are subject to change pending the completion of the final 2023 SAFE report, public comment, and the Council's recommendations for the final 2024 and 2025 harvest specifications during its December 2023 meeting. These proposed amounts are consistent with the biological condition of groundfish stocks as described in the 2022 SAFE report. The proposed ABCs reflect harvest amounts that are less than the specified overfishing levels. The proposed TACs have been adjusted for other biological information and socioeconomic considerations, including maintaining the entire TAC within the required OY range. Pursuant to Section 3.2.3.4.1 of the FMP, the Council could recommend adjusting the final TACs ''if warranted on the basis of bycatch considerations, management uncertainty, or socioeconomic considerations; or if required in order to cause the sum of the TACs to fall within the OY range.'' Table 1 lists the proposed 2024 and 2025 OFL, ABC, TAC, initial TAC (ITAC), and CDQ amounts for groundfish for the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—PROPOSED 2024 AND 2025 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

| Species | Area | Proposed 2024 and 2025 | | | | | |
|---|---|---|---|---|---|---|---|
| | | OFL | ABC | TAC | ITAC [2] | CDQ [3 4] | Nonspecified reserves |
| Pollock [4] | BS | 4,639,000 | 2,275,000 | 1,302,000 | 1,171,800 | 130,200 | |
| | AI | 52,043 | 43,092 | 19,000 | 17,100 | 1,900 | |
| | Bogoslof | 115,146 | 86,360 | 300 | 300 | | |
| Pacific cod [5] | BS | 166,814 | 140,159 | 123,295 | 110,102 | 13,193 | |
| | AI | 18,416 | 13,812 | 8,425 | 7,524 | 901 | |
| Sablefish [6] | Alaska-wide | 48,561 | 41,539 | n/a | n/a | n/a | |
| | BS | n/a | 10,185 | 9,676 | 4,112 | 1,330 | 363 |
| | AI | n/a | 10,308 | 9,793 | 2,081 | 1,653 | 184 |
| Yellowfin sole | BSAI | 495,155 | 462,890 | 230,656 | 205,976 | 24,680 | |
| Greenland turbot | BSAI | 3,947 | 3,364 | 3,364 | 2,859 | n/a | |
| | BS | n/a | 2,836 | 2,836 | 2,411 | 303 | 122 |
| | AI | n/a | 528 | 528 | 449 | | 79 |
| Arrowtooth flounder | BSAI | 103,070 | 87,511 | 15,000 | 12,750 | 1,605 | 645 |
| Kamchatka flounder | BSAI | 8,776 | 7,435 | 7,435 | 6,320 | | 1,115 |
| Rock sole [7] | BSAI | 196,011 | 119,969 | 66,000 | 58,938 | 7,062 | |
| Flathead sole [8] | BSAI | 81,167 | 66,927 | 35,500 | 31,702 | 3,799 | |
| Alaska plaice | BSAI | 43,328 | 36,021 | 18,000 | 15,300 | | 2,700 |
| Other flatfish [9] | BSAI | 22,919 | 17,189 | 4,500 | 3,825 | | 675 |
| Pacific Ocean perch | BSAI | 49,279 | 41,322 | 38,264 | 33,667 | n/a | |
| | BS | n/a | 11,700 | 11,700 | 9,945 | | 1,755 |
| | EAI | n/a | 8,013 | 8,013 | 7,156 | 857 | |
| | CAI | n/a | 5,551 | 5,551 | 4,957 | 594 | |
| | WAI | n/a | 16,058 | 13,000 | 11,609 | 1,391 | |
| Northern rockfish | BSAI | 22,105 | 18,135 | 11,000 | 9,350 | | 1,650 |
| Blackspotted /Rougheye rockfish [10] | BSAI | 763 | 570 | 570 | 485 | | 86 |
| | BS/EAI | n/a | 388 | 388 | 330 | | 58 |
| | CAI/WAI | n/a | 182 | 182 | 155 | | 27 |
| Shortraker rockfish | BSAI | 706 | 530 | 530 | 451 | | 80 |
| Other rockfish [11] | BSAI | 1,680 | 1,260 | 1,260 | 1,071 | | 189 |
| | BS | n/a | 880 | 880 | 748 | | 132 |
| | AI | n/a | 380 | 380 | 323 | | 57 |
| Atka mackerel | BSAI | 101,188 | 86,464 | 66,855 | 59,702 | 7,153 | |
| | EAI/BS | n/a | 37,958 | 30,000 | 26,790 | 3,210 | |
| | CAI | n/a | 15,218 | 15,218 | 13,590 | 1,628 | |
| | WAI | n/a | 33,288 | 21,637 | 19,322 | 2,315 | |
| Skates | BSAI | 44,168 | 36,837 | 27,927 | 23,738 | | 4,189 |
| Sharks | BSAI | 689 | 450 | 250 | 213 | | 38 |
| Octopuses | BSAI | 4,769 | 3,576 | 400 | 340 | | 60 |
| Total | BSAI | 6,219,700 | 3,569,366 | 2,000,000 | 1,779,703 | 196,622 | 13,929 |

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea subarea (BS) includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to fixed gear, and the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands (AI) Pacific ocean perch), 15 percent of each TAC is put into a nonspecified reserve. The ITAC for these species is the remainder of the TAC after subtraction of the reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnote 3 and 4).

[3] For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and AI Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(C)). Twenty percent of the sablefish TAC allocated to fixed gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for BS Greenland turbot and BSAI arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). The 2025 fixed gear portion of the sablefish ITAC and CDQ reserve will not be specified until the final 2025 and 2026 harvest specifications. AI Greenland turbot, ''other flatfish,'' Alaska plaice, BS Pacific ocean perch, Kamchatka flounder, northern rockfish, shortraker rockfish, blackspotted and rougheye rockfish, ''other rockfish,'' skates, sharks, and octopuses are not allocated to the CDQ Program.

[4] Under § 679.20(a)(5)(i)(A), the annual BS pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (50,000 mt), is further allocated by sector for a pollock directed fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Section 679.20(a)(5)(iii)(B)(*1*) requires the AI pollock TAC to be set at 19,000 mt when the AI pollock ABC equals or exceeds 19,000 mt. Under § 679.20(a)(5)(iii)(B)(*2*), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (3,420 mt), is allocated to the Aleut Corporation for a pollock directed fishery. The Bogoslof pollock TAC is set to accommodate incidental catch amounts.

[5] The proposed BS Pacific cod TAC is set to account for 12 percent, plus 45 mt, of the BS ABC for the State of Alaska's (State) guideline harvest level in State waters of the BS. The proposed AI Pacific cod TAC is set to account for 39 percent (5,387 mt) of the AI ABC for the State guideline harvest level in State waters of the AI.

[6] The sablefish OFL and ABC are Alaska-wide and include the Gulf of Alaska. The Alaska-wide sablefish OFL and ABC are included in the total OFL and ABC. The BS and AI sablefish TACs are set to account for the 5 percent of the BS and AI ABC for the State of Alaska's (State) guideline harvest level in State waters of the BS and AI.

[7] ''Rock sole'' includes *Lepidopsetta polyxystra* (Northern rock sole).

[8] "Flathead sole" includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).
[9] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[10] "Blackspotted/Rougheye rockfish" includes *Sebastes melanostictus* (blackspotted) and *Sebastes aleutianus* (rougheye).
[11] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, dark rockfish, northern rockfish, shortraker rockfish, and blackspotted/rougheye rockfish.
**Note:** Regulatory areas and districts are defined at § 679.2 (BSAI = Bering Sea and Aleutian Islands management area, BS = Bering Sea subarea, AI = Aleutian Islands subarea, EAI = Eastern Aleutian district, CAI = Central Aleutian district, WAI = Western Aleutian district.)

*Groundfish Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and AI Pacific Ocean Perch*

Section 679.20(b)(1)(i) requires NMFS to reserve 15 percent of the TAC for each target species category (except for pollock, fixed gear allocation of sablefish, and Amendment 80 species) in a nonspecified reserve. Section 679.20(b)(1)(ii)(B) requires that NMFS allocate 20 percent of the fixed gear allocation of sablefish to the fixed gear sablefish CDQ reserve for each subarea. Section 679.20(b)(1)(ii)(D) requires that NMFS allocate 7.5 percent of the trawl gear allocation of sablefish for each subarea and 10.7 percent of BS Greenland turbot and BSAI arrowtooth flounder TACs to the respective CDQ reserves. Section 679.20(b)(1)(ii)(C) requires that NMFS allocate 10.7 percent of the TACs for Atka mackerel, AI Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod (the Amendment 80 allocated species) to the respective CDQ reserves.

Sections 679.20(a)(5)(i)(A) and 679.31(a) require allocation of 10 percent of the BS pollock TAC to the pollock CDQ directed fishing allowance (DFA). Sections 679.20(a)(5)(iii)(B)(*2*)(*i*) and 679.31(a) require 10 percent of the AI pollock TAC be allocated to the pollock CDQ DFA. The entire Bogoslof District pollock TAC is allocated as an incidental catch allowance (ICA) pursuant to § 679.20(a)(5)(ii) because the Bogoslof District is closed to directed fishing for pollock by regulation (§ 679.22(a)(7)(B)). With the exception of the fixed gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS proposes a pollock ICA of 50,000 mt of the BS pollock TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidentally retained and discarded catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2000 through 2023. During this 24-year period, the pollock incidental catch ranged from a low of 2.2 percent in 2006 to a high of 4.6 percent in 2014, with a 23-year average of 3 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS proposes a pollock ICA of 20 percent or 3,420 mt of the AI pollock TAC after subtracting the 10 percent CDQ DFA. This allowance is based on NMFS's examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2023. During this 21-year period, the incidental catch of pollock ranged from a low of 5 percent in 2015 to a high of 20 percent in 2023, with a 10-year average of 12 percent in the most recent ten years.

After subtracting the 10.7 percent CDQ reserve and pursuant to § 679.20(a)(8) and (10), NMFS proposes ICAs of 3,000 mt of flathead sole, 6,000 mt of rock sole, 4,000 mt of yellowfin sole, 10 mt of Western Aleutian district Pacific ocean perch, 60 mt of Central Aleutian district Pacific ocean perch, 100 mt of Eastern Aleutian district Pacific ocean perch, 20 mt of Western Aleutian district Atka mackerel, 75 mt of Central Aleutian district Atka mackerel, and 800 mt of Eastern Aleutian district and BS Atka mackerel. These ICAs are based on NMFS's examination of the incidental catch in other target fisheries from 2003 through 2023.

The regulations do not designate the remainder of the nonspecified reserve by species or species group. Any amount of the reserve may be apportioned to a target species that contributed to the nonspecified reserve during the year, provided that such apportionments are consistent with § 679.20(a)(3) and do not result in overfishing (see § 679.20(b)(1)(i)). In the final 2024 and 2025 harvest specifications, NMFS will evaluate whether any apportionments are necessary and may apportion from the nonspecified reserve to increase the ITAC for any target species that contributed to the reserve.

*Allocations of Pollock TAC Under the American Fisheries Act (AFA)*

Section 679.20(a)(5)(i)(A) requires that BS pollock TAC be apportioned as a DFA, after subtracting 10 percent for the CDQ Program and 50,000 for the ICA, as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor (CP) sector, and 10 percent to the mothership sector. In the BS, 45 percent of the DFAs are allocated to the A season (January 20 to June 10), and 55 percent of the DFAs are allocated to the B season (June 10 to November 1) (§§ 679.20(a)(5)(i)(B)(*1*) and 679.23(e)(2)). The AI directed pollock fishery allocation to the Aleut Corporation is the amount of pollock TAC remaining in the AI after subtracting 1,900 mt for the CDQ DFA (10 percent), and 3,420 mt for the ICA (§ 679.20(a)(5)(iii)(B)(*2*)). In the AI, the total A season apportionment of the pollock TAC (including the AI directed fishery allocation, the CDQ DFA, and the ICA) may not exceed 40 percent of the ABC for AI pollock, and the remainder of the pollock TAC is allocated to the B season (§ 679.20(a)(5)(iii)(B)(*3*)). Table 2 lists these proposed 2024 and 2025 amounts. Within any fishing year, any under harvest or over harvest of a seasonal allowance may be added to or subtracted from a subsequent seasonal allowance (§§ 679.20(a)(5)(i)(B)(*2*) and 679.20(a)(5)(iii)(B)(*3*)(iii)).

Section 679.20(a)(5)(iii)(B)(*6*) sets harvest limits for pollock in the A season (January 20 to June 10) in Areas 543, 542, and 541. In Area 543, the A season pollock harvest limit is no more than 5 percent of the AI pollock ABC. In Area 542, the A season pollock harvest limit is no more than 15 percent of the AI pollock ABC. In Area 541, the A season pollock harvest limit is no more than 30 percent of the AI pollock ABC.

Section 679.20(a)(5)(i)(A)(*4*) includes several specific requirements regarding BS pollock allocations. First, it requires that 8.5 percent of the pollock allocated to the CP sector be available for harvest by American Fisheries Act (AFA) CVs with CP sector endorsements, unless the Regional Administrator receives a cooperative contract that allows the distribution of harvest among AFA CPs and AFA CVs in a manner agreed to by all members. Second, AFA CPs not listed in the AFA are limited to harvesting no more than 0.5 percent of the pollock allocated to the CP sector. Table 2 lists the proposed 2024 and 2025 allocations of pollock TAC. Tables 14, 15, and 16 list the AFA CP and CV harvesting sideboard limits. The BS inshore pollock cooperative and open access sector allocations are based on the submission of AFA inshore cooperative applications due to NMFS on December 1 of each calendar year. Because AFA inshore cooperative

applications for 2024 have not been submitted to NMFS, and NMFS therefore cannot calculate 2024 allocations, NMFS has not included inshore cooperative tables in these proposed harvest specifications. NMFS will post the 2024 AFA inshore pollock cooperative and open access sector allocations on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-reports* prior to the start of the fishing year on January 1, 2024, based on the harvest specifications effective on that date.

Table 2 lists proposed seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest of pollock within the SCA, as defined at § 679.22(a)(7)(vii), is limited to no more than 28 percent of the annual pollock DFA before 12 p.m. (noon), April 1, as provided in § 679.20(a)(5)(i)(C). The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA.

TABLE 2—PROPOSED 2024 AND 2025 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

| Area and sector | 2024 and 2025 Allocations | A season [1] | | B season [1] |
|---|---|---|---|---|
| | | A season DFA | SCA harvest limit [2] | B season DFA |
| Bering Sea subarea TAC | 1,302,000 | n/a | n/a | n/a |
| CDQ DFA | 130,200 | 58,590 | 36,456 | 71,610 |
| ICA [1] | 50,000 | n/a | n/a | n/a |
| Total Bering Sea DFA (non-CDQ) | 1,121,800 | 504,810 | 314,104 | 616,990 |
| AFA Inshore | 560,900 | 252,405 | 157,052 | 308,495 |
| AFA Catcher/Processors [3] | 448,720 | 201,924 | 125,642 | 246,796 |
| Catch by CPs | 410,579 | 184,760 | n/a | 225,818 |
| Catch by CVs [3] | 38,141 | 17,164 | n/a | 20,978 |
| Unlisted CP Limit [4] | 2,244 | 1,010 | n/a | 1,234 |
| AFA Motherships | 112,180 | 50,481 | 31,410 | 61,699 |
| Excessive Harvesting Limit [5] | 196,315 | n/a | n/a | n/a |
| Excessive Processing Limit [6] | 336,540 | n/a | n/a | n/a |
| Aleutian Islands subarea ABC | 43,092 | n/a | n/a | n/a |
| Aleutian Islands subarea TAC | 19,000 | n/a | n/a | n/a |
| CDQ DFA | 1,900 | 1,894 | n/a | 6 |
| ICA | 3,420 | 1,710 | n/a | 1,710 |
| Aleut Corporation | 13,680 | 13,633 | n/a | 47 |
| Area harvest limit [7] | n/a | n/a | n/a | n/a |
| 541 | 12,928 | n/a | n/a | n/a |
| 542 | 6,464 | n/a | n/a | n/a |
| 543 | 2,155 | n/a | n/a | n/a |
| Bogoslof District ICA [8] | 300 | n/a | n/a | n/a |

[1] Pursuant to § 679.20(a)(5)(i)(A), the annual Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (50,000 mt), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (CPs)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA and CDQ DFA are allocated to the A season (January 20–June 10) and 55 percent of the DFA and CDQ DFA are allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (3,420 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the AI pollock ABC.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1. The SCA is defined at § 679.22(a)(7)(vii).

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the DFA allocated to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a cooperative contract for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted CPs are limited to harvesting not more than 0.5 percent of the C/P sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

*Allocation of the Atka Mackerel TACs*

Section 679.20(a)(8) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtracting the CDQ reserves, ICAs for the BSAI trawl limited access sector and non-trawl gear sector, and the jig gear allocation (table 3). The percentage of the ITAC for Atka mackerel allocated to the Amendment 80 and BSAI trawl limited access sectors is listed in table 33 to 50 CFR part 679 and in § 679.91. Pursuant to § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian district and BS subarea Atka mackerel TAC may be allocated to vessels using jig gear. The percent of this allocation is recommended annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS proposes, a 0.5 percent allocation of the Atka mackerel TAC in the Eastern Aleutian district and BS subarea to the jig sector gear in 2024 and 2025.

Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel TAC, after subtraction of the jig gear allocation, into two equal seasonal allowances. Section 679.23(e)(3) sets the first

seasonal allowance for directed fishing with trawl gear from January 20 through June 10 (A season), and the second seasonal allowance from June 10 through December 31 (B season). Section 679.23(e)(4)(iii) applies Atka mackerel seasons to trawl CDQ Atka mackerel fishing. Within any fishing year, any under harvest or over harvest of a seasonal allowance may be added to or subtracted from a subsequent seasonal allowance (§ 679.20(a)(8)(ii)(B)). The ICA and jig gear allocations are not apportioned by season.

Sections 679.20(a)(8)(ii)(C)(*1*)(*i*) and (*ii*) limit Atka mackerel catch within waters 0 nautical miles (nmi) to 20 nmi of Steller sea lion sites listed in table 6 to 50 CFR part 679 and located west of 178° W longitude to no more than 60 percent of the annual TACs in Areas 542 and 543, and equally divides that annual harvest limit between the A and B seasons as defined at § 679.23(e)(3). Section 679.20(a)(8)(ii)(C)(*2*) requires that the annual TAC in Area 543 will be no more than 65 percent of the ABC in Area 543. Section 679.20(a)(8)(ii)(D) requires that any unharvested Atka mackerel A season allowance that is added to the B season be prohibited from being harvested within waters 0–20 nmi of Steller sea lion sites listed in table 6 to 50 CFR part 679 and located in Areas 541, 542, and 543.

Table 3 lists the proposed 2024 and 2025 Atka mackerel season allowances, area allowances, and the sector allocations. One Amendment 80 cooperative has been formed for the 2024 fishing year. Because all Amendment 80 vessels are part of the sole cooperative, no allocation to the Amendment 80 limited access sector is required for 2024. The 2025 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024. NMFS will post the 2025 Amendment 80 cooperatives and Amendment 80 limited access sector allocations on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska* prior to the start of the fishing year on January 1, 2025, based on the harvest specifications effective on that date.

TABLE 3—PROPOSED 2024 AND 2025 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE (ICA), AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

| Sector [1] | Season [2 3 4] | 2024 and 2025 Allocation by area | | |
|---|---|---|---|---|
| | | Eastern Aleutian district/Bering Sea | Central Aleutian district [5] | Western Aleutian district [5] |
| TAC | n/a | 30,000 | 15,218 | 21,637 |
| CDQ reserve | Total | 3,210 | 1,628 | 2,315 |
| | A | 1,605 | 814 | 1,158 |
| | Critical habitat [5] | n/a | 488 | 695 |
| | B | 1,605 | 814 | 1,158 |
| | Critical habitat [5] | n/a | 488 | 695 |
| non-CDQ TAC | n/a | 26,790 | 13,590 | 19,322 |
| ICA | Total | 800 | 75 | 20 |
| Jig [6] | Total | 130 | ..... | ..... |
| BSAI trawl limited access | Total | 2,586 | 1,351 | ..... |
| | A | 1,293 | 676 | ..... |
| | Critical habitat [5] | n/a | 405 | ..... |
| | B | 1,293 | 676 | ..... |
| | Critical habitat [5] | n/a | 405 | ..... |
| Amendment 80 [7] | Total | 23,274 | 12,163 | 19,302 |
| | A | 11,637 | 6,082 | 9,651 |
| | Critical habitat [5] | n/a | 3,649 | 5,791 |
| | B | 11,637 | 6,082 | 9,651 |
| | Critical habitat [5] | n/a | 3,649 | 5,791 |

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, ICAs, and the jig gear allocation, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see § 679.20(b)(1)(ii)(C)).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel for the CDQ reserve, BSAI trawl limited access sector, and Amendment 80 sector are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10, and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(*1*)(*ii*) equally divides the annual harvest limit between the A and B seasons as defined at § 679.23(e)(3); and § 679.20(a)(8)(ii)(C)(*2*) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

[6] Sections 679.2 and 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and Bering Sea subarea TAC be allocated to jig gear after subtraction of the CDQ reserve and ICA. The proposed amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

[7] The 2025 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024.

*Allocation of the Pacific Cod TAC*

The Council separated the BSAI OFL, ABC, and TAC into BS and AI subarea OFLs, ABCs, and TACs for Pacific cod in 2014 (79 FR 12108, March 4, 2014). Section 679.20(b)(1)(ii)(C) allocates 10.7 percent of the BS TAC and the AI TAC to the CDQ Program. After CDQ allocations have been deducted from the respective BS and AI Pacific cod TACs, the remaining BS and AI Pacific cod TACs are combined for calculating further BSAI Pacific cod sector allocations and seasonal allowances. If

the non-CDQ Pacific cod TAC is or will be reached in either the BS or the AI subareas, NMFS will prohibit directed fishing for non-CDQ Pacific cod in that subarea, as provided in § 679.20(d)(1)(iii).

Section 679.20(a)(7)(ii) allocates to the non-CDQ sectors the combined BSAI Pacific cod TAC, after subtracting 10.7 percent for the CDQ Program, as follows: 1.4 percent to vessels using jig gear, 2.0 percent to hook-and-line or pot CVs less than 60 feet (ft) (18.3 meters (m)) length overall (LOA), 0.2 percent to hook-and-line CVs greater than or equal to 60 ft (18.3 m) LOA, 48.7 percent to hook-and-line CPs, 8.4 percent to pot CVs greater than or equal to 60 ft (18.3 m) LOA, 1.5 percent to pot CPs, 2.3 percent to AFA trawl CPs, 13.4 percent to the Amendment 80 sector, and 22.1 percent to trawl CVs. The BSAI ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of BSAI Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2024 and 2025, the Regional Administrator proposes a BSAI ICA of 500 mt, based on anticipated incidental catch by these sectors in other fisheries. During the fishing year, NMFS may reallocate unharvested Pacific cod among sectors, consistent with the reallocation hierarchy set forth at § 679.20(a)(7)(iii).

The BSAI ITAC allocation of Pacific cod to the Amendment 80 sector is established in table 33 to 50 CFR part 679 and § 679.91. One Amendment 80 cooperative has been formed for the 2024 fishing year. Because all Amendment 80 vessels are part of the sole cooperative, no allocation to the Amendment 80 limited access sector is required for 2024. The 2025 allocations for Pacific cod between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024. NMFS will post the 2025 Amendment 80 cooperatives and Amendment 80 limited access fishery allocations on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska* prior to the start of the fishing year on January 1, 2025, based on the harvest specifications effective on that date.

The BSAI ITAC allocation of Pacific cod to the PCTC Program is established in § 679.131(b). Section 679.131(b)(1)(i) also requires NMFS to establish an ICA for incidental catch of Pacific cod by trawl CVs engaged in directed fishing for groundfish other than PCTC Program Pacific cod. In the annual harvest specification process, NMFS determines the Pacific cod trawl catcher vessel TAC and the annual apportionment of Pacific cod in the A and B seasons between the PCTC Program DFA and the ICA (§ 679.131(b)(2)) (Table 4 below). The allocations to PCTC Program cooperatives are not included in these proposed harvest specifications. PCTC Program cooperative applications are not due to NMFS until November 1, 2023; therefore, NMFS cannot calculate 2024 and 2025 allocations in conjunction with these proposed harvest specifications (§ 679.131(b)). After receiving the PCTC Program applications, NMFS will calculate the 2024 and 2025 allocations for PCTC Program cooperatives, as set forth in in § 679.131(b). NMFS will post the 2024 PCTC Program cooperative allocations on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-reports* prior to the start of the fishing year on January 1, 2024, based on the harvest specifications effective on that date. The 2025 allocations for Pacific cod for PCTC Program cooperatives will not be known until eligible participants apply for participation in the program by November 1, 2024.

The sector allocations of Pacific cod are apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7)(i)(B) (CDQ), 679.20(a)(7)(iv)(A) (non-CDQ), and 679.23(e)(5) (seasons)). Table 4 lists the non-CDQ sector and seasonal allowances. In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a non-CDQ Pacific cod seasonal allowance for any sector, except the jig sector, will become available at the beginning of that sector's next seasonal allowance. Section 679.20(a)(7)(i)(B) sets forth the CDQ Pacific cod gear allowances by season, and CDQ groups are prohibited from exceeding those seasonal allowances (§ 679.7(d)(6)).

Section 679.20(a)(7)(vii) requires that the Regional Administrator establish an Area 543 Pacific cod harvest limit based on Pacific cod abundance in Area 543 as determined by the annual stock assessment process. Based on the 2022 stock assessment, the Regional Administrator has preliminarily determined for 2024 and 2025 that the estimated amount of Pacific cod abundance in Area 543 is 15.7 percent of total AI abundance. To calculate the Area 543 Pacific cod harvest limit, NMFS first subtracts the State GHL Pacific cod amount from the AI Pacific cod ABC. Then NMFS determines the harvest limit in Area 543 by multiplying the percentage of Pacific cod estimated in Area 543 (15.7 percent) by the remaining ABC for AI Pacific cod. Based on these calculations, which rely on the 2022 stock assessment, the proposed Area 543 harvest limit is 1,323 mt. However, the final Area 543 harvest limit could change if the Pacific cod abundance in Area 543 changes based on the stock assessment in the final 2023 SAFE report.

Under the PCTC Program, PCTC cooperatives are required to collectively set aside up to twelve percent of the trawl CV A-season allocation for delivery to an AI shoreplant established through the process set forth at § 679.132 in years in which an AI community representative notifies NMFS of their intent to process Pacific cod in Adak or Atka. A notice of intent to process PCTC Program Pacific cod for 2024 must be submitted in writing to the Regional Administrator by a representative of the City of Adak or the City of Atka no later than October 15. A notice of intent was not received in 2023, and accordingly the set-aside will not be in effect for 2024. The 2025 set-aside will be determined after the October 15, 2024 deadline in conjunction with the 2025 and 2026 harvest specifications process.

Based on the proposed 2024 and 2025 Pacific cod TACs, Table 4 lists the CDQ and non-CDQ TAC amounts, non-CDQ seasonal allowances by gear, the sector allocations of Pacific cod, and the seasons set forth at § 679.23(e)(5).

TABLE 4—PROPOSED 2024 AND 2025 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI [1] PACIFIC COD TAC

[Amounts are in metric tons]

| Sector | Percent | 2024 and 2025 share of gear sector total | 2024 and 2025 share of sector total | 2024 and 2025 seasonal allowances | |
|---|---|---|---|---|---|
| | | | | Season | Amount |
| Total Bering Sea TAC | n/a | 123,295 | n/a | n/a | n/a |

TABLE 4—PROPOSED 2024 AND 2025 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI [1] PACIFIC COD TAC—Continued

[Amounts are in metric tons]

| Sector | Percent | 2024 and 2025 share of gear sector total | 2024 and 2025 share of sector total | 2024 and 2025 seasonal allowances | |
|---|---|---|---|---|---|
| | | | | Season | Amount |
| Bering Sea CDQ | n/a | 13,193 | n/a | See § 679.20(a)(7)(i)(B) | n/a |
| Bering Sea non-CDQ TAC | n/a | 110,102 | n/a | n/a | n/a |
| Total Aleutian Islands TAC | n/a | 8,425 | n/a | n/a | n/a |
| Aleutian Islands CDQ | n/a | 901 | n/a | See § 679.20(a)(7)(i)(B) | n/a |
| Aleutian Islands non-CDQ TAC | n/a | 7,524 | n/a | n/a | n/a |
| Western Aleutians Islands Limit | n/a | 1,323 | n/a | n/a | n/a |
| Total BSAI non-CDQ TAC [1] | 100.0 | 117,626 | n/a | n/a | n/a |
| Total hook-and-line/pot gear | 60.8 | 71,517 | n/a | n/a | n/a |
| Hook-and-line/pot ICA [2] | n/a | n/a | 500 | n/a | n/a |
| Hook-and-line/pot sub-total | n/a | 71,017 | n/a | n/a | n/a |
| Hook-and-line catcher/processors | 48.7 | n/a | 56,883 | n/a | n/a |
| A-season | | | | Jan 1–Jun 10 | 29,011 |
| B-season | | | | Jun 10–Dec 31 | 27,873 |
| Hook-and-line catcher vessels ≥60 ft LOA | 0.2 | n/a | 234 | n/a | n/a |
| A-season | | | | Jan 1–Jun 10 | 119 |
| B-season | | | | Jun 10–Dec 31 | 114 |
| Pot catcher/processors | 1.5 | n/a | 1,752 | n/a | n/a |
| A-season | | | | Jan 1–Jun 10 | 894 |
| B-season | | | | Sept 1–Dec 31 | 859 |
| Pot catcher vessels ≥60 ft LOA | 8.4 | n/a | 9,812 | n/a | n/a |
| A-season | | | | Jan 1–Jun 10 | 5,004 |
| B-season | | | | Sept 1–Dec 31 | 4,808 |
| Catcher vessels <60 ft LOA using hook-and-line or pot gear | 2.0 | n/a | 2,336 | n/a | n/a |
| Trawl catcher vessels [3] | 22.1 | 25,995 | n/a | n/a | n/a |
| A-Season ICA | | | | Jan 20–Apr 1 | 1,500 |
| A-season PCTC | | | | Jan 20–Apr 1 | 17,737 |
| B-season ICA | | | | Apr 1–Jun 10 | 700 |
| B-season PCTC | | | | Apr 1–Jun 10 | 2,159 |
| C-season trawl catcher vessels | | | | Jun 10–Nov 1 | 3,899 |
| AFA trawl catcher/processors | 2.3 | 2,705 | n/a | n/a | n/a |
| A-season | | | | Jan 20–Apr 1 | 2,029 |
| B-season | | | | Apr 1–Jun 10 | 676 |
| C-season | | | | Jun 10–Nov 1 | |
| Amendment 80 | 13.4 | 15,762 | n/a | n/a | n/a |
| A-season | | | | Jan 20–Apr 1 | 11,821 |
| B-season | | | | Apr 1–Jun 10 | 3,940 |
| C-season | | | | Jun 10–Dec 31 | |
| Jig | 1.4 | 1,647 | n/a | n/a | n/a |
| A-season | | | | Jan 1–Apr 30 | 988 |
| B-season | | | | Apr 30–Aug 31 | 329 |
| C-season | | | | Aug 31–Dec 31 | 329 |

[1] The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after subtraction of the reserves for the CDQ Program. If the TAC for Pacific cod in either the BS or AI is or will be reached, then directed fishing will be prohibited for non-CDQ Pacific cod in that subarea, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

[2] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator proposes an ICA of 500 mt based on anticipated incidental catch by these sectors in other fisheries.

[3] The A and B season trawl CV Pacific cod allocation will be allocated to the Pacific Cod Trawl Cooperative Program after subtraction of the A and B season ICAs (§ 679.131(b)(1)). The Regional Administrator proposes for the A and B seasons ICAs of 1,500 mt and 700 mt, respectively, to account for projected incidental catch of Pacific cod by trawl catcher vessels engaged in directed fishing for groundfish other than PCTC Program Pacific cod.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

*Sablefish Gear Allocation*

Section 679.20(a)(4)(iii) and (iv) require allocation of sablefish TAC for the BS and AI between trawl gear and fixed gear. Gear allocations of the sablefish TAC for the BS are 50 percent for trawl gear and 50 percent for fixed gear. Gear allocations of the TAC for the AI are 25 percent for trawl gear and 75 percent for fixed gear. Section 679.20(b)(1)(ii)(B) requires that NMFS apportion 20 percent of the fixed gear allocation of sablefish TAC to the CDQ reserve for each subarea. Also, § 679.20(b)(1)(ii)(D)(*1*) requires that 7.5 percent of the trawl gear allocation of sablefish TAC from the nonspecified reserve, established under § 679.20(b)(1)(i), be apportioned to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the fixed gear sablefish Individual Fishing Quota (IFQ) fisheries are limited to the 2024 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 5 lists the proposed 2024 and 2025 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5—PROPOSED 2024 AND 2025 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

| Subarea and gear | Percent of TAC | 2024 share of TAC | 2024 ITAC [1] | 2024 CDQ reserve | 2025 share of TAC | 2025 ITAC | 2025 CDQ reserve |
|---|---|---|---|---|---|---|---|
| Bering Sea: | | | | | | | |
| Trawl gear | 50 | 4,838 | 4,112 | 363 | 4,838 | 4,112 | 363 |
| Fixed gear [2] | 50 | 4,838 | n/a | 968 | n/a | n/a | n/a |
| Total | 100 | 9,676 | 4,112 | 1,330 | 4,838 | 4,112 | 363 |
| Aleutian Islands: | | | | | | | |
| Trawl gear | 25 | 2,448 | 2,081 | 184 | 2,448 | 2,081 | 184 |
| Fixed gear [2] | 75 | 7,345 | n/a | 1,469 | n/a | n/a | n/a |
| Total | 100 | 9,793 | 2,081 | 1,653 | 2,448 | 2,081 | 184 |

[1] For the sablefish TAC allocated to vessels using trawl gear, 15 percent of TAC is apportioned to the nonspecified reserve (§ 679.20(b)(1)(i)). The ITAC for vessels using trawl gear is the remainder of the TAC after the subtraction of this reserve. In the BS and AI, 7.5 percent of the trawl gear allocation of TAC is assigned from the nonspecified reserve to the CDQ reserve (§ 679.20(b)(1)(ii)(D)(*1*)).

[2] For the sablefish TAC allocated to vessels using fixed gear, 20 percent of the allocated TAC for the BS and AI is reserved for use by CDQ participants (§ 679.20(b)(1)(ii)(B)). The ITAC for vessels using fixed gear is the remainder of the TAC after the subtraction of the CDQ reserve. The Council recommended that specifications for the fixed gear sablefish IFQ fisheries be limited to 1 year.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

*Allocation of the AI Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs*

Section 679.20(a)(10)(i) and (ii) require that NMFS allocate AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs between the Amendment 80 sector and the BSAI trawl limited access sector, after subtracting 10.7 percent for the CDQ reserves and amounts for ICAs for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITACs for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in accordance with tables 33 and 34 to 50 CFR part 679 and in § 679.91.

One Amendment 80 cooperative has been formed for the 2024 fishing year. Because all Amendment 80 vessels are part of the sole cooperative, no allocation to the Amendment 80 limited access sector is required for 2024. The 2025 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024. NMFS will post the 2025 Amendment 80 cooperatives and Amendment 80 limited access sector allocations on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska* prior to the start of the fishing year on January 1, 2025, based on the harvest specifications effective on that date. Table 6 lists the proposed 2024 and 2025 allocations of the AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 6—PROPOSED 2024 AND 2025 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TACS

[Amounts are in metric tons]

| Sector | 2024 and 2025 allocations | | | | | |
|---|---|---|---|---|---|---|
| | Pacific ocean perch | | | Flathead sole | Rock sole | Yellowfin sole |
| | Eastern Aleutian district | Central Aleutian district | Western Aleutian district | BSAI | BSAI | BSAI |
| TAC | 8,013 | 5,551 | 13,000 | 35,500 | 66,000 | 230,656 |
| CDQ | 857 | 594 | 1,391 | 3,799 | 7,062 | 24,680 |
| ICA | 100 | 60 | 10 | 3,000 | 6,000 | 4,000 |
| BSAI trawl limited access | 706 | 490 | 232 | ..... | ..... | 45,733 |
| Amendment 80 [1] | 6,350 | 4,407 | 11,367 | 28,702 | 52,938 | 156,243 |

[1] The 2025 allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024.

Section 679.2 defines the ABC surplus for flathead sole, rock sole, and yellowfin sole as the difference between the annual ABC and TAC for each species. Section 679.20(b)(1)(iii) establishes ABC reserves for flathead sole, rock sole, and yellowfin sole. The ABC surpluses and the ABC reserves are necessary to mitigate the operational variability, environmental conditions, and economic factors that may constrain the CDQ groups and the Amendment 80 cooperatives from fully harvesting their allocations and to improve the likelihood of achieving and maintaining, on a continuing basis, the optimum yield in the BSAI groundfish fisheries. NMFS, after consultation with the Council, may set the ABC reserve at or below the ABC surplus for each species, thus maintaining the TAC at or below ABC limits. An amount equal to 10.7 percent of the ABC reserves will be allocated as CDQ ABC reserves for

flathead sole, rock sole, and yellowfin sole. Section 679.31(b)(4) establishes the annual allocations of CDQ ABC reserves among the CDQ groups. The Amendment 80 ABC reserves are the ABC reserves minus the CDQ ABC reserves. Section 679.91(i)(2) establishes each Amendment 80 cooperative ABC reserves to be the ratio of each cooperatives' quota share units and the total Amendment 80 quota share units, multiplied by the Amendment 80 ABC reserve for each respective species. Table 7 lists the proposed 2024 and 2025 ABC surplus and ABC reserves for BSAI flathead sole, rock sole, and yellowfin sole.

TABLE 7—PROPOSED 2024 AND 2025 [1] ABC SURPLUS, ABC RESERVES, COMMUNITY DEVELOPMENT QUOTA (CDQ) ABC RESERVES, AND AMENDMENT 80 ABC RESERVES IN THE BSAI FOR FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE

[Amounts are in metric tons]

| Sector | Flathead sole | Rock sole | Yellowfin sole |
|---|---|---|---|
| ABC | 66,927 | 119,969 | 462,890 |
| TAC | 35,500 | 66,000 | 230,656 |
| ABC surplus | 31,427 | 53,969 | 232,234 |
| ABC reserve | 31,427 | 53,969 | 232,234 |
| CDQ ABC reserve | 3,363 | 5,775 | 24,849 |
| Amendment 80 ABC reserve | 28,064 | 48,194 | 207,385 |

[1] The 2025 allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024.

*Proposed PSC Limits for Halibut, Salmon, Crab, and Herring*

Section 679.21(b), (e), (f), and (g) set forth the BSAI PSC limits. Pursuant to § 679.21(b)(1), the annual BSAI halibut PSC limits total 3,515 mt. Section 679.21(b)(1) allocates 315 mt of the halibut PSC limit as the PSQ reserve for use by the groundfish CDQ Program, 1,745 mt of the halibut PSC limit for the Amendment 80 sector, 745 mt of the halibut PSC limit for the BSAI trawl limited access sector, and 710 mt of the halibut PSC limit for the BSAI non-trawl sector.

Under Amendment 123 and its implementing regulations, the annual BSAI halibut PSC limit for the CDQ Program (315 mt), BSAI trawl limited access sector (745 mt), and BSAI non-trawl sector (710 mt) will total 1,770 mt (these individual halibut PSC limits are unchanged). An additional amount of BSAI halibut PSC limit for the Amendment 80 sector will be determined annually based on the most recent halibut abundance estimates from the IPHC setline survey index and the NMFS AFSC Eastern Bering Sea shelf trawl survey index. The 2023 AFSC Eastern Bering Sea shelf trawl survey index estimate of halibut abundance is 170,238 mt and is above the threshold level of 150,000 mt. The IPHC setline survey index is unknown at this time but will be available by December 2023. NMFS will calculate the Amendment 80 sector halibut PSC limit and the total halibut PSC limit in the final 2024 and 2025 harvest specifications.

Section 679.21(b)(1)(iii)(A) and (B) require apportionment of the BSAI non-trawl halibut PSC limit into PSC allowances among six fishery categories, and §§ 679.21(b)(1)(ii)(A) and (B), (e)(3)(i)(B), and (e)(3)(iv) require apportionment of the BSAI trawl limited access sector's halibut and crab PSC limits into PSC allowances among seven fishery categories. Tables 10 and 11 list the proposed fishery PSC allowances for the BSAI trawl limited access sector fisheries, and Table 12 lists the proposed fishery PSC allowances for the non-trawl fisheries.

Pursuant to Section 3.6 of the FMP, the Council recommends, and NMFS proposes, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years, after consultation with the Council, NMFS proposes to exempt the pot gear fishery, the jig gear fishery, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because (1) the pot gear fisheries have low halibut bycatch mortality; (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the gear; and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ Program requires legal-size halibut to be retained by vessels using fixed gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)).

As of November 8, 2023, total groundfish catch for the pot gear fishery in the BSAI was 18,036 mt, with an associated halibut bycatch mortality of 9 mt. The 2023 jig gear fishery harvested less than 1 mt of groundfish. Most vessels in the jig gear fleet are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. As mentioned above, NMFS estimates a negligible amount of halibut bycatch mortality because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Under § 679.21(f)(2), NMFS annually allocates portions of either 33,318, 45,000, 47,591, or 60,000 Chinook salmon PSC limits among the AFA sectors, depending on past bycatch performance, on whether Chinook salmon bycatch incentive plan agreements (IPA) are formed, and on whether NMFS determines it is a low Chinook salmon abundance year. NMFS will determine that it is a low Chinook salmon abundance year when abundance of Chinook salmon in western Alaska is less than or equal to 250,000 Chinook salmon. The State provides to NMFS an estimate of Chinook salmon abundance using the 3-System Index for western Alaska, based on the Kuskokwim, Unalakleet, and Upper Yukon aggregate stock grouping.

If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6), and if it is not a low Chinook salmon abundance year, then NMFS will allocate a portion of the 60,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(A). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and if it is not a low abundance year, then NMFS will allocate a portion of the 47,591 Chinook salmon PSC limit to that sector as

specified in § 679.21(f)(3)(iii)(C). If an AFA sector participates in an approved IPA and has not exceeded its performance standard under § 679.21(f)(6) in a low abundance year, then NMFS will allocate a portion of the 45,000 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(B). If no IPA is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), and if in a low abundance year, then NMFS will allocate a portion of the 33,318 Chinook salmon PSC limit to that sector as specified in § 679.21(f)(3)(iii)(D).

NMFS has determined that 2023 was a low Chinook salmon abundance year, based on the State's estimate that Chinook salmon abundance in western Alaska is less than 250,000 Chinook salmon. Therefore, in 2024, the Chinook salmon PSC limit is 45,000 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(B).

The AFA sector Chinook salmon PSC allocations are also seasonally apportioned with 70 percent of the allocation for the A season pollock fishery, and 30 percent of the allocation for the B season pollock fishery (§§ 679.21(f)(3)(i) and 679.23(e)(2)). In 2024, the Chinook salmon bycatch performance standard under § 679.21(f)(6) is 33,318 Chinook salmon, allocated to each sector as specified in § 679.21(f)(3)(iii)(D). If a sector exceeds its Chinook salmon bycatch performance standard in any three of seven consecutive years, that sector's allocation is reduced to the amount allocated under the Chinook salmon bycatch performance standard at § 679.21(f)(3)(iii)(C)–(D). NMFS publishes the approved IPAs and the Chinook salmon PSC allocations and reports at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska.*

Section 679.21(g)(2)(i) specifies 700 fish as the 2024 and 2025 Chinook salmon PSC limit for the AI pollock fishery. Section 679.21(g)(2)(ii) allocates 7.5 percent, or 53 Chinook salmon, as the AI PSQ reserve for the CDQ Program, and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries.

Section 679.21(f)(14)(i) specifies 42,000 fish as the 2024 and 2025 non-Chinook salmon PSC limit for vessels using trawl gear from August 15 through October 14 in the Catcher Vessel Operational Area (CVOA). Section 679.21(f)(14)(ii) allocates 10.7 percent, or 4,494 non-Chinook salmon, in the CVOA as the PSQ reserve for the CDQ Program and allocates the remaining 37,506 non-Chinook salmon in the CVOA to the non-CDQ fisheries. Section 679.21(f)(14)(iv) exempts from closures in the Chum Salmon Savings Area trawl vessels participating in directed fishing for pollock and operating under an IPA approved by NMFS.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

Based on the most recent (2023) survey data, the red king crab mature female abundance is estimated at 11.054 million red king crabs, and the effective spawning biomass is estimated at 20.055 million lbs (9,320 mt). Based on the criteria set out at § 679.21(e)(1)(i), the calculated 2024 and 2025 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals. This limit derives from the mature female abundance estimate above 8.4 million mature red king crab and an effective spawning biomass between 14.5 and 55 million lbs.

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify, after consultation with the Council, an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS) if the State has established a GHL fishery for red king crab in the Bristol Bay area in the previous year. The regulations limit the RKCSS red king crab bycatch limit to 25 percent of the red king crab PSC limit, based on the need to optimize the groundfish harvest relative to red king crab bycatch. In October 2023, the Council recommended, and NMFS proposes, that the RKCSS red king crab bycatch limit for 2024 and 2025 be equal to 25 percent of the red king crab PSC limit (Table 9).

Based on the most recent (2023) survey data from the NMFS annual bottom trawl survey, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 730 million animals. Pursuant to criteria set out at § 679.21(e)(1)(ii), the calculated 2024 and 2025 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1, and 2,970,000 animals in Zone 2. The limit in Zone 1 is based on the total abundance of *C. bairdi* (estimated at 730 million animals), which is greater than 400 million animals. The limit in Zone 2 is based on the total abundance of *C. bairdi* (estimated at 730 million animals), which is greater than 400 million animals.

Pursuant to § 679.21(e)(1)(iii), the PSC limit for trawl gear for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit in the *C. opilio* bycatch limitation zone (COBLZ) is set at 0.1133 percent of the Bering Sea abundance index minus 150,000 crabs, unless a minimum or maximum PSC limit applies. Based on the most recent (2023) survey estimate of 1.142 billion animals, the calculated *C. opilio* crab PSC limit is 1,143,886 animals. Because 0.1133 percent multiplied by the total abundance is less than 4.5 million animals, the minimum PSC limit applies, and the PSC limit will be 4.350 million animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern Bering Sea herring biomass. Due to the lack of new information as of October 2023 regarding herring PSC limits and apportionments, the Council recommended, and NMFS proposes, basing the proposed 2024 and 2025 herring PSC limits and apportionments on the 2022 survey data. Based on the 2022 survey data, the best current estimate of 2024 and 2025 herring biomass is 344,379 mt. This amount was developed by the Alaska Department of Fish and Game based on biomass for spawning aggregations. Therefore, the herring PSC limit proposed for 2024 and 2025 is 3,444 mt for all trawl gear as listed in Tables 8 and 9. The Council and NMFS will reconsider the proposed herring PSC limit if updated survey data and information on biomass becomes available.

Section 679.21(e)(3)(i)(A)(*1*) allocates 10.7 percent of each trawl gear PSC limit specified for crab as a PSQ reserve for use by the groundfish CDQ Program. Section 679.21(e)(3)(i)(A) requires that crab PSQ reserves be subtracted from the total trawl PSC limits. The crab and halibut PSC limits assigned to the Amendment 80 and BSAI trawl limited access sectors are listed in table 35 to 50 CFR part 679. The resulting proposed 2024 and 2025 allocations of crab and halibut PSC limits to CDQ PSQ, the Amendment 80 sector, and the BSAI trawl limited access sector are listed in table 8. Pursuant to §§ 679.21(b)(1)(i), 679.21(e)(3)(vi), and 679.91(d) through (f), crab and halibut trawl PSC limits assigned to the Amendment 80 sector are then further allocated to Amendment 80 cooperatives as cooperative quotas. Crab and halibut PSC cooperative quotas assigned to Amendment 80 cooperatives are not allocated to specific fishery categories.

One Amendment 80 cooperative has been formed for the 2024 fishing year. Because all Amendment 80 vessels are part of the sole cooperative, no PSC limit allocation to the Amendment 80 limited access sector is required for 2024. The 2025 PSC limit allocations between Amendment 80 cooperatives

and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2024. NMFS will post the 2025 Amendment 80 cooperatives and Amendment 80 limited access sector allocations on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/sustainable-fisheries-alaska* prior to the start of the fishing year on January 1, 2025, based on the harvest specifications effective on that date.

The BSAI ITAC allocation of halibut and crab PSC limits to the PCTC Program is established in § 679.131(c) and (d). The halibut PSC apportioned to the trawl CV sector is 98 percent of the halibut PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category, and the remaining 2 percent is apportioned to the AFA CP sector. The trawl CV sector apportionment is further allocated to the A and B seasons (95 percent) and the C season (5 percent). The allocation to the A and B season is subject to reductions consistent with § 679.131(c)(1)(iii). The crab PSC apportioned to the trawl CV sector is 90.6 percent of the crab PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category, and the remaining 9.4 percent is apportioned to the AFA CP sector. The trawl CV sector apportionment is further allocated to the A and B seasons (95 percent) and the C season (5 percent), and the A and B season limit is reduced by 35 percent to determine the overall PCTC Program crab PSC limit.

The halibut and crab PSC limit allocations to PCTC Program cooperatives are not included in these proposed harvest specifications. PCTC Program cooperative applications are not due to NMFS until November 1, 2023; therefore, NMFS cannot calculate 2024 allocations in conjunction with these proposed harvest specifications (§ 679.131(c) and (d)). After receiving the PCTC Program cooperative applications, NMFS will calculate the 2024 halibut and crab PSC limits for PCTC Program cooperatives, as set forth in in § 679.131(c) and (d) and post them on the Alaska Region website at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-fisheries-management-reports* prior to the start of the fishing year on January 1, 2024, based on the harvest specifications effective on that date. The 2025 allocations of halibut and crab PSC limits for PCTC Program cooperatives will not be known until eligible participants apply for participation in the program by November 1, 2024.

Section 679.21(b)(2) and (e)(5) authorize NMFS, after consulting with the Council, to establish seasonal apportionments of halibut and crab PSC amounts for the BSAI non-trawl, BSAI trawl limited access, and Amendment 80 limited access sectors to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors considered are (1) seasonal distribution of prohibited species; (2) seasonal distribution of target groundfish species relative to prohibited species distribution; (3) prohibited species bycatch needs on a seasonal basis relevant to prohibited species biomass and expected catches of target groundfish species; (4) expected variations in bycatch rates throughout the year; (5) expected changes in directed groundfish fishing seasons; (6) expected start of fishing effort; and (7) economic effects of establishing seasonal prohibited species apportionments on segments of the target groundfish industry. Based on this criteria, the Council recommended, and NMFS proposes, the seasonal PSC apportionments in Tables 10, 11, and 12 to maximize harvest among gear types, fisheries, and seasons, while minimizing bycatch of PSC.

TABLE 8—PROPOSED 2024 AND 2025 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

| PSC species, areas, and zones [1] | Total PSC [4] | Non-trawl PSC | CDQ PSQ reserve [2] | Trawl PSC remaining after CDQ PSQ | Amendment 80 sector [3 4] | BSAI trawl limited access sector | BSAI PSC limits not allocated [2] |
|---|---|---|---|---|---|---|---|
| Halibut mortality (mt) BSAI | 3,515 | 710 | 315 | n/a | 1,745 | 745 | n/a |
| Herring (mt) BSAI | 3,444 | n/a | n/a | n/a | n/a | n/a | n/a |
| Red king crab (animals) Zone 1 | 97,000 | n/a | 10,379 | 86,621 | 43,293 | 26,489 | 16,839 |
| *C. opilio* (animals) COBLZ | 4,350,000 | n/a | 465,450 | 3,884,550 | 1,909,256 | 1,248,494 | 726,799 |
| *C. bairdi* crab (animals) Zone 1 | 980,000 | n/a | 104,860 | 875,140 | 368,521 | 411,228 | 95,390 |
| *C. bairdi* crab (animals) Zone 2 | 2,970,000 | n/a | 317,790 | 2,652,210 | 627,778 | 1,241,500 | 782,932 |

[1] Refer to § 679.2 for definitions of areas and zones.

[2] The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

[3] The Amendment 80 program reduced apportionment of the trawl PSC limits for crab below the total PSC limit. These reductions are not apportioned to other gear types or sectors.

[4] Under Amendment 123 and its implementing regulations, the BSAI halibut PSC limit for the Amendment 80 sector will be determined annually based on the most recent halibut abundance estimates from the IPHC setline survey index and the NMFS AFSC Eastern Bering Sea shelf trawl survey index. NMFS will update the halibut PSC limit for the Amendment 80 sector, as well as the total halibut PSC limit, in the final harvest specifications.

TABLE 9—PROPOSED 2024 AND 2025 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

| Fishery categories | Herring (mt) BSAI | Red king crab (animals) Zone 1 |
|---|---|---|
| Yellowfin sole | 200 | n/a |
| Rock sole/flathead sole/Alaska plaice/other flatfish [1] | 99 | n/a |
| Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish | 10 | n/a |
| Rockfish | 10 | n/a |
| Pacific cod | 18 | n/a |
| Midwater trawl pollock | 3,066 | n/a |
| Pollock/Atka mackerel/other species [2 3] | 41 | n/a |
| 2024 Red king crab savings subarea non-pelagic trawl gear [4] | n/a | 24,250 |

TABLE 9—PROPOSED 2024 AND 2025 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS—Continued

| Fishery categories | Herring (mt) BSAI | Red king crab (animals) Zone 1 |
|---|---|---|
| Total trawl PSC | 3,444 | 97,000 |

[1] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[2] Pollock other than midwater trawl pollock, Atka mackerel, and "other species" fishery category.
[3] "Other species" for PSC monitoring includes skates, sharks, and octopuses.
[4] In October 2023, the Council recommended, and NMFS proposes, that the red king crab bycatch limit within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(*2*)).
**Note:** Species apportionments may not total precisely due to rounding.

TABLE 10—PROPOSED 2024 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTORS AND PACIFIC COD TRAWL COOPERATIVE PROGRAM

| BSAI trawl limited access sector fisheries | Prohibited species and area [1] | | | | |
|---|---|---|---|---|---|
| | Halibut mortality (mt) BSAI | Red king crab (animals) Zone 1 | *C. opilio* (animals) COBLZ | *C. bairdi* (animals) | |
| | | | | Zone 1 | Zone 2 |
| Yellowfin sole | 265 | 23,337 | 1,192,179 | 346,228 | 1,185,500 |
| Rock sole/flathead sole/other flatfish [2] | | | | | |
| Greenland turbot/arrowtooth flounder/Kamchatka flounder/ sablefish | | | | | |
| Rockfish, April 15–December 31 | 5 | | 1,006 | | 1,000 |
| Total Pacific cod [3] | 300 | 2,955 | 50,281 | 60,000 | 50,000 |
| AFA CP Pacific cod | 6 | 278 | 4,726 | 5,640 | 4,700 |
| PCTC Program Pacific cod, A and B Season | 244 | 1,653 | 28,130 | 33,567 | 27,973 |
| Trawl CV Pacific cod, C Season | 15 | 134 | 2,278 | 2,718 | 2,265 |
| PCTC Program unallocated reduction | 35 | 890 | 15,147 | 18,075 | 15,062 |
| Pollock/Atka mackerel/other species [4] | 175 | 197 | 5,028 | 5,000 | 5,000 |
| Total BSAI trawl limited access sector PSC | 745 | 26,489 | 1,248,494 | 411,228 | 1,241,500 |

[1] Refer to § 679.2 for definitions of areas and zones.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[3] With the implementation of the PCTC Program, the BSAI trawl limited access sector Pacific cod fishery category PSC limits are further apportioned between AFA CPs, PCTC A and B-season, and open access C season (§ 679.131(c) and (d)). In the first year of the Program, 2024, NMFS will apply a 12.5 percent reduction to the A and B season trawl CV sector halibut PSC limit and a 35 percent reduction to the A and B season trawl CV sector crab PSC limit. The proposed 2024 PCTC Program A and B season halibut and crab PSC limits include these reductions. In the second year of the Program and every year thereafter, NMFS will apply a 25 percent and 35 percent reduction to the A and B season trawl CV sector halibut and crab PSC limit, respectively. Any amount of the PCTC Program PSC limit remaining after the B season may be reapportioned to the trawl CV limited access fishery in the open access C season. Because the annual halibut PSC limit for the PCTC Program is not a fixed amount established in regulation and, instead, is determined annually through the harvest specification process, NMFS must apply the reductions to the A and B season apportionment of the trawl CV sector apportionment to implement the overall PSC reductions under the PCTC Program.
[4] "Other species" for PSC monitoring includes skates, sharks, and octopuses.
**Note:** Species apportionments may not total precisely due to rounding.

TABLE 11—PROPOSED 2025 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTORS AND PACIFIC COD TRAWL COOPERATIVE PROGRAM

| BSAI trawl limited access sector fisheries | Prohibited species and area [1] | | | | |
|---|---|---|---|---|---|
| | Halibut mortality (mt) BSAI | Red king crab (animals) Zone 1 | *C. opilio* (animals) COBLZ | *C. bairdi* (animals) | |
| | | | | Zone 1 | Zone 2 |
| Yellowfin sole | 265 | 23,337 | 1,192,179 | 346,228 | 1,185,500 |
| Rock sole/flathead sole/other flatfish [2] | | | | | |
| Greenland turbot/arrowtooth flounder/Kamchatka flounder/ sablefish | | | | | |
| Rockfish April 15–December 31 | 5 | | 1,006 | | 1,000 |
| Total Pacific cod [3] | 300 | 2,955 | 50,281 | 60,000 | 50,000 |
| AFA CP Pacific cod | 6 | 278 | 4,726 | 5,640 | 4,700 |
| PCTC Program Pacific cod, A and B Season | 209 | 1,653 | 28,130 | 33,567 | 27,973 |
| Trawl CV Pacific cod, C Season | 15 | 134 | 2,278 | 2,718 | 2,265 |
| PCTC Program unallocated reduction | 70 | 890 | 15,147 | 18,075 | 15,062 |
| Pollock/Atka mackerel/other species [4] | 175 | 197 | 5,028 | 5,000 | 5,000 |
| Total BSAI trawl limited access sector PSC | 745 | 26,489 | 1,248,494 | 411,228 | 1,241,500 |

[1] Refer to § 679.2 for definitions of areas and zones.

[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[3] With the implementation of the PCTC Program, the BSAI trawl limited access sector Pacific cod fishery category PSC limits are further apportioned between AFA CPs, PCTC A and B-season, and open access C season (§ 679.131(c) and (d)). In the second year of the PCTC Program, 2025, and every year thereafter, NMFS will apply a 25 and 35 percent reduction to the A and B season trawl CV sector halibut and crab PSC limit, respectively. The proposed 2025 PCTC Program A and B season halibut and crab PSC limits include these reductions. Any amount of the PCTC Program PSC limit remaining after the B season may be reapportioned to the trawl CV limited access fishery in the open access C season. Because the annual halibut PSC limit for the PCTC Program is not a fixed amount established in regulation and, instead, is determined annually through the harvest specification process, NMFS must apply the reductions to the A and B season apportionment of the trawl CV sector apportionment to implement the overall PSC reductions under the PCTC Program.

[4] "Other species" for PSC monitoring includes skates, sharks, and octopuses.

**Note:** Species apportionments may not total precisely due to rounding.

TABLE 12—PROPOSED 2024 AND 2025 HALIBUT PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIES

| | | Halibut mortality (mt) BSAI | | |
|---|---|---|---|---|
| Non-trawl fisheries | Seasons | Catcher/ processor | Catcher vessel | All non-trawl |
| Pacific cod | Annual Pacific cod | 648 | 13 | 661 |
| | January 1–June 10 | 388 | 9 | n/a |
| | June 10–August 15 | 162 | 2 | n/a |
| | August 15–December 31 | 98 | 2 | n/a |
| Non-Pacific cod non-trawl-Total | May 1–December 31 | n/a | n/a | 49 |
| Groundfish pot and jig | n/a | n/a | n/a | Exempt |
| Sablefish hook-and-line | n/a | n/a | n/a | Exempt |
| Total for all non-trawl PSC | n/a | n/a | n/a | 710 |

*Halibut Discard Mortality Rates (DMRs)*

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, DMRs, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observed estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual BSAI stock assessment process. The DMR methodology and findings are included as an appendix to the annual BSAI groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council's directive. An interagency halibut working group (IPHC, Council, and NMFS staff) developed improved estimation methods that have undergone review by the Plan Team, SSC, and the Council. A summary of the revised methodology is included in the BSAI proposed 2017 and 2018 harvest specifications (81 FR 87863, December 6, 2016), and the comprehensive discussion of the working group's statistical methodology is available from the Council (see **ADDRESSES**). The DMR working group's revised methodology is intended to improve estimation accuracy, transparency, and transferability used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). The methodology will continue to ensure that NMFS is using DMRs that more accurately reflect halibut mortality, which will inform the different sectors of their estimated halibut mortality and allow specific sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

At the October 2023 meeting, the SSC, AP, and Council recommended halibut DMRs derived from the revised methodology, and NMFS proposes DMRs calculated under the revised methodology. The proposed 2024 and 2025 DMRs use an updated 2-year reference period, except pot gear uses an updated 4-year reference period. Comparing the proposed 2024 and 2025 DMRs to the final DMRs from the 2023 and 2024 harvest specifications, the DMR for pelagic trawl gear remained at 100 percent, the DMR for motherships and CPs using non-pelagic trawl gear remained at 85 percent, the DMR for CVs using non-pelagic trawl gear increased to 63 percent from 62 percent, the DMR for CPs using hook-and-line gear decreased to 7 percent from 9 percent, the DMR for CVs using hook-and-line gear decreased to 7 percent from 9 percent, and the DMR for pot gear remained at 26 percent. Table 13 lists the proposed 2024 and 2025 DMRs.

TABLE 13—PROPOSED 2024 AND 2025 PACIFIC HALIBUT DISCARD MORTALITY RATES (DMR) FOR THE BSAI

| Gear | Sector | Halibut discard mortality rate (percent) |
|---|---|---|
| Pelagic trawl | All | 100 |
| Non-pelagic trawl | Mothership and catcher/processor | 85 |
| Non-pelagic trawl | Catcher vessel | 63 |
| Hook-and-line | Catcher vessel | 7 |
| Hook-and-line | Catcher/processor | 7 |

TABLE 13—PROPOSED 2024 AND 2025 PACIFIC HALIBUT DISCARD MORTALITY RATES (DMR) FOR THE BSAI—Continued

| Gear | Sector | Halibut discard mortality rate (percent) |
|---|---|---|
| Pot | All | 26 |

*Listed AFA CP Sideboard Limits*

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA CPs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA fishery and from fishery cooperatives in the directed pollock fishery. These restrictions are set as sideboard limits on catch. On February 8, 2019, NMFS published a final rule (84 FR 2723) that implemented regulations to prohibit non-exempt AFA CPs from directed fishing for all groundfish species or species groups subject to sideboard limits (see § 679.20(d)(1)(iv)(D) and table 54 to 50 CFR part 679). NMFS proposes to exempt AFA CPs from a yellowfin sole sideboard limit pursuant to § 679.64(a)(1)(v) because the proposed 2024 and 2025 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Section 679.64(a)(2) and tables 40 and 41 to 50 CFR part 679 establish a formula for calculating PSC sideboard limits for halibut and crab caught by listed AFA CPs. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). PSC species listed in table 14 that are caught by listed AFA CPs participating in any groundfish fishery other than pollock will accrue against the proposed 2024 and 2025 PSC sideboard limits for the listed AFA CPs. Section 679.21(b)(4)(iii), (e)(3)(v), and (e)(7) authorize NMFS to close directed fishing for groundfish other than pollock for listed AFA CPs once a proposed 2024 or 2025 PSC sideboard limit listed in table 14 is reached. Pursuant to § 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC by listed AFA CPs while fishing for pollock will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/''other species'' fishery categories, according to § 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 14—PROPOSED 2024 AND 2025 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS

| PSC species and area [1] | Ratio of PSC to total PSC | Proposed 2024 and 2025 PSC available to trawl vessels after subtraction of PSQ [2] | Proposed 2024 and 2025 CP sideboard limit [2] |
|---|---|---|---|
| Halibut mortality BSAI | n/a | n/a | 286 |
| Red king crab Zone 1 | 0.007 | 86,621 | 606 |
| *C. opilio* (COBLZ) | 0.153 | 3,884,550 | 594,336 |
| *C. bairdi* Zone 1 | 0.140 | 875,140 | 122,520 |
| *C. bairdi* Zone 2 | 0.050 | 2,652,210 | 132,611 |

[1] Refer to § 679.2 for definitions of areas.
[2] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

*AFA CV Sideboard Limits*

The Regional Administrator is responsible for restricting the ability of listed AFA CVs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the pollock directed fishery. These restrictions are set out as sideboard limits on catch. Section 679.64(b)(3) and (b)(4) and tables 40 and 41 to 50 CFR part 679 establish formulas for setting AFA CV groundfish and halibut and crab PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002), Amendment 80 (72 FR 52668, September 14, 2007), and Amendment 122 (88 FR 53704, August 8, 2023). NMFS proposes to exempt AFA CVs from a yellowfin sole sideboard limit pursuant to § 679.64(b)(6) because the proposed 2024 and 2025 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

On February 8, 2019, NMFS published a final rule (84 FR 2723) that implemented regulations to prohibit non-exempt AFA CVs from directed fishing for a majority of the groundfish species or species groups subject to sideboard limits (see § 679.20(d)(1)(iv)(D) and table 55 to 50 CFR part 679). The only remaining sideboard limit for non-exempt AFA CVs is for Pacific cod. Pursuant to Amendment 122 to the FMP, the Pacific cod sideboard limit is no longer necessary in the A and B seasons because directed fishing in the BSAI for Pacific cod by trawl CVs is now managed under the PCTC Program, and accordingly the sideboard limit is in effect in the C season only (§ 679.64(b)(3)(ii)). Table 15 lists the proposed 2024 and 2025 AFA CV Pacific cod sideboard limits.

TABLE 15—PROPOSED 2024 AND 2025 BSAI PACIFIC COD SIDEBOARD LIMITS FOR AMERICAN FISHERIES ACT CATCHER VESSELS (CVS)

[Amounts are in metric tons]

| Fishery by area/gear/season | Ratio of 1997 AFA CV catch to TAC | 2024 and 2025 initial TAC for C Season | 2024 and 2025 AFA catcher vessel sideboard limits |
|---|---|---|---|
| Pacific cod BSAI | n/a | n/a | n/a |
| Trawl gear CV | n/a | n/a | n/a |
| C Season (Jun 10–Nov 1) | 0.8609 | 3,899 | 3,357 |

**Note:** As proposed, § 679.64(b)(6) would exempt AFA CVs from a yellowfin sole sideboard limit because the proposed 2024 and 2025 aggregate ITAC of yellowfin sole assigned to the Amendment 80 sector and BSAI trawl limited access sector is greater than 125,000 mt.

Halibut and crab PSC limits listed in table 16 that are caught by AFA CVs participating in any groundfish fishery other than pollock will accrue against the 2024 and 2025 PSC sideboard limits for the AFA CVs. Section 679.21(b)(4)(iii), (e)(3)(v), and (e)(7) authorize NMFS to close directed fishing for groundfish other than pollock for AFA CVs once a proposed 2024 or 2025 PSC sideboard limit listed in Table 16 is reached. Pursuant to § 679.21(b)(1)(ii)(C) and (e)(3)(ii)(C), halibut or crab PSC by AFA CVs while fishing for pollock will accrue against the PSC allowances annually specified for the pollock/Atka mackerel/''other species'' fishery categories under § 679.21(b)(1)(ii)(B) and (e)(3)(iv).

TABLE 16—PROPOSED 2024 AND 2025 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

| PSC species and area [1] | Target fishery category [2] | AFA catcher vessel PSC sideboard limit ratio | Proposed 2024 and 2025 PSC limit after subtraction of PSQ reserves [3] | Proposed 2024 and 2025 AFA catcher vessel PSC sideboard limit [3] |
|---|---|---|---|---|
| Halibut | Pacific cod trawl | n/a | n/a | N/A |
| | Pacific cod hook-and-line or pot | n/a | n/a | 2 |
| | Yellowfin sole total | n/a | n/a | 101 |
| | Rock sole/flathead sole/Alaska plaice/other flatfish [4] | n/a | n/a | 228 |
| | Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish | n/a | n/a | |
| | Rockfish | n/a | n/a | 2 |
| | Pollock/Atka mackerel/other species [5] | n/a | n/a | 5 |
| Red king crab Zone 1 | n/a | 0.2990 | 86,621 | 25,900 |
| *C. opilio* COBLZ | n/a | 0.1680 | 3,884,550 | 652,604 |
| *C. bairdi* Zone 1 | n/a | 0.3300 | 875,140 | 288,796 |
| *C. bairdi* Zone 2 | n/a | 0.1860 | 2,652,210 | 493,311 |

[1] Refer to § 679.2 for definitions of areas and zones.
[2] Target fishery categories are defined at § 679.21(b)(1)(ii)(B) and (e)(3)(iv).
[3] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[4] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Alaska plaice, arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.
[5] ''Other species'' for PSC monitoring includes skates, sharks, and octopuses.

## Classification

NMFS is issuing this proposed rule pursuant to section 305(d) of the Magnuson-Stevens Act. Through previous actions, the FMP and regulations authorize NMFS to take this action (50 CFR part 679). The NMFS Assistant Administrator has preliminarily determined that the proposed harvest specifications are consistent with the FMP, the Magnuson-Stevens Act, and other applicable laws, subject to further review and consideration after public comment.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866 because it only implements annual catch limits.

NMFS prepared an EIS for the Alaska groundfish harvest specifications and alternative harvest strategies (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the ROD for the Final EIS. A SIR is being prepared for the final 2024 and 2025 harvest specifications to provide a subsequent assessment of the action and to address the need to prepare a Supplemental EIS (40 CFR 1501.11(b) and 1502.9(d)(1)). Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental, social, and economic consequences of alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information.

*Initial Regulatory Flexibility Analysis*

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes (1) the action; (2) the reasons why this proposed rule is proposed; (3) the objectives and legal basis for this proposed rule; (4) the estimated number and description of directly regulated small entities to which this proposed rule would apply; (5) the recordkeeping, reporting, and other compliance requirements of this proposed rule; and (6) the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives

of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained earlier in the preamble and are not repeated here.

For RFA purposes 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 (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates) and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. A shoreside and mothership processor primarily involved in seafood processing (NAICS code 311710) 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 employment, counting all individuals employed on a full-time, part-time, or other basis, not in excess of 750 employees for all its affiliated operations worldwide.

*Number and Description of Small Entities Regulated by This Proposed Rule*

The entities directly regulated by the groundfish harvest specifications include: (1) entities operating vessels with groundfish Federal fisheries permits (FFPs) catching FMP groundfish in Federal waters (including those receiving direction allocations of groundfish); (2) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the State-waters parallel fisheries; and (3) all entities operating vessels fishing for halibut inside 3 nmi of the shore (whether or not they have FFPs). In 2022 (the most recent year of complete data), there were 135 individual CVs and CPs with gross revenues less than or equal to $11 million as well as 6 CDQ groups. This represents the potential suite of directly regulated small entities. This includes an estimated 130 small CV and 2 small CP entities in the BSAI groundfish sector. The determination of entity size is based on vessel revenues and affiliated group revenues. This determination also includes an assessment of fisheries cooperative affiliations, although actual vessel ownership affiliations have not been completely established. However, the estimate of these 130 CVs may be an overstatement of the number of small entities. This latter group of vessels had average gross revenues that varied by gear type. Average gross revenues for hook-and-line CVs, pot gear CVs, and trawl gear CVs are estimated to be $800,000, $1.5 million, and $2.7 million, respectively. Average gross revenues for CP entities are confidential. There are three AFA cooperative affiliated motherships, which appear to fall under the 750-worker threshold and are therefore small entities. The average gross revenues for the AFA motherships are confidential.

*Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

The action under consideration is the proposed 2024 and 2025 harvest specifications, apportionments, and prohibited species catch limits for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits for groundfish during the 2024 and 2025 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. The establishment of the proposed harvest specifications is governed by the Council and NMFS's harvest strategy to govern the catch of groundfish in the BSAI. This strategy was selected from among five alternatives, with the preferred alternative harvest strategy being one in which the TACs fall within the range of ABCs recommended by the SSC. Under the preferred harvest strategy, TACs are set to a level that falls within the range of ABCs recommended by the SSC, and the sum of the TACs must achieve the OY specified in the FMP. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant.

The TACs associated with the preferred harvest strategy are those recommended by the Council in October 2023. OFLs and ABCs for the species were based on recommendations prepared by the Council's Plan Team in September 2023, and reviewed by the Council's SSC in October 2023. The Council based its TAC recommendations on those of its AP, which were consistent with the SSC's OFL and ABC recommendations. The sum of all TACs remains within the OY for the BSAI consistent with § 679.20(a)(1)(i)(A). Because setting all TACs equal to ABCs would cause the sum of TACs to exceed an OY of 2 million mt, TACs for some species or species groups are lower than the ABCs recommended by the Plan Team and the SSC.

The proposed 2024 and 2025 OFLs and ABCs are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods to calculate stock biomass. The proposed 2024 and 2025 TACs are based on the best available biological and socioeconomic information. The proposed 2024 and 2025 OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2022 SAFE report, which is the most recently completed SAFE report.

Under this action, the proposed ABCs reflect harvest amounts that are less than the specified overfishing levels. The proposed TACs are within the range of proposed ABCs recommended by the SSC and do not exceed the biological limits recommended by the SSC (the ABCs and overfishing levels). For some species and species groups in the BSAI, the Council recommended, and NMFS proposes, proposed TACs equal to proposed ABCs, which is intended to maximize harvest opportunities in the BSAI. However, NMFS cannot set TACs for all species in the BSAI equal to their ABCs due to the constraining OY limit of 2 million mt. For this reason, some proposed TACs are less than the proposed ABCs. The specific reductions were reviewed and recommended by the Council's AP, and the Council in turn adopted the AP's TAC recommendations in making its own recommendations for the proposed 2024 and 2025 TACs.

Based upon the best scientific data available, and in consideration of the objectives of this action, it appears that there are no significant alternatives to the proposed rule that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the proposed rule on small entities. This action is economically beneficial to entities operating in the BSAI, including small entities. The action proposes TACs for commercially-valuable species in the BSAI and allows for the continued prosecution of the fishery, thereby creating the opportunity for fishery revenue. After public process during which the Council solicited input from stakeholders, the Council recommended the proposed harvest specifications, which NMFS determines would best accomplish the stated objectives articulated in the preamble for this proposed rule, and in applicable

statutes, and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

This action does not modify recordkeeping or reporting requirements, or duplicate, overlap, or conflict with any Federal rules.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

Adverse impacts on marine mammals or endangered or threatened species resulting from fishing activities conducted under these harvest specifications are discussed in the Final EIS and its accompanying annual SIRs (see **ADDRESSES**).

**Authority:** 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: November 30, 2023.

**Samuel D. Rauch, III,**

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

[FR Doc. 2023–26707 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 88, No. 232
Tuesday, December 5, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Farmers' Market Nutrition Program (FMNP)—Reporting and Recordkeeping Burden

**AGENCY:** Food and Nutrition Service (FNS), Department of Agriculture (USDA).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of a currently approved collection for the reporting and recordkeeping burden associated with the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Farmers' Market Nutrition Program (FMNP) regulations.

**DATES:** Written comments must be received on or before February 5, 2024.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comment.

- *Preferred Method:* Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.
- *Mail:* Allison Post, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Room 328, Alexandria, VA 22302.
- *Email:* Send email to *allison.post@usda.gov.*

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Allison Post at 703–457–7708.

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Title:* Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Farmers' Market Nutrition Program (FMNP)—Reporting and Recordkeeping Burden.

*Form Number:* FNS–683B (under OMB Control Number 0584–0594) is associated with this collection.

*OMB Number:* 0584–0447.

*Expiration Date:* August 31, 2024.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The WIC Farmers' Market Nutrition Program (FMNP) is associated with the Special Supplemental Nutrition Program for Women, Infants, and Children, also known as WIC. WIC provides supplemental foods, health care referrals, and nutrition education at no cost to low-income pregnant, breastfeeding, and non-breastfeeding post-partum individuals, infants, and children up to 5 years of age at nutritional risk. The purpose of FMNP is to provide fresh, nutritious, unprepared, locally grown fruits and vegetables through farmers' markets and roadside stands to WIC participants, and to expand awareness and use of, and sales at, farmers' markets and roadside stands. Currently, FMNP operates through State health departments in 41 States, 7 Indian Tribal Organizations, District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

Section 17(m)(8) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(m)(8)), and FMNP regulations at 7 CFR part 248 require that certain program-related information be collected and that full and complete records concerning FMNP operations are maintained. The information reporting and recordkeeping burdens are necessary to ensure appropriate and efficient management of FMNP. The burden activities that are covered by this Information Collection Request (ICR) include requirements that involve the authorization and monitoring of State agencies; the certification of FMNP participants; the nutrition education that is provided to participants; farmer and market authorization, monitoring, and management; and financial and participation data.

State Plans are the principal source of information about how each State agency operates FMNP. Information from participants and local agencies is collected through State agency-developed forms or Management Information Systems (MIS). The information collected is used by the Department of Agriculture/Food and Nutrition Service to manage, plan, evaluate, make decisions and report on FMNP operations. Along with State Plans, State agencies also submit the Federal-State Supplemental Nutrition Programs Agreements (FNS–339), for which the associated reporting and recordkeeping burden is approved under OMB Control Number: 0584–0332, Expiration Date: 06/30/2025. Additionally, FMNP financial and participation data are collected using the WIC Farmers Market Nutrition Program (FMNP) Annual Financial and Program Data Report (FNS 683B), for which the form and its associated reporting burden are approved under OMB Control Number: 0584–0594 Food Programs Reporting System (FPRS), Expiration Date: 09/30/2026. Recordkeeping burden associated with form FNS 683B is not approved under OMB Control Number 0584–0594. State agencies must maintain records in order to support data reported in FPRS, and the recordkeeping burden for such record maintenance is captured in this ICR, OMB Control Number: 0584–0447.

This information collection is requesting a revision in the burden hours due to program changes resulting from FMNP State agencies transitioning from paper coupon systems to electronic benefit systems, as well as one existing requirement that has been in use

without PRA approval. The requested revisions in this information collection also reflect program adjustments to account for changes in the number of FMNP participants, FMNP authorized outlets, and FMNP State and local agencies.

The currently approved burden for this collection is 1,640,906 hours. FNS estimates the new burden at 1,175,580 burden hours, which is a decrease of 465,326 hours. The currently approved total annual responses are 4,909,194. FNS estimates the new number of responses at 4,148,625, which is a decrease of 760,569 total annual responses.

*Affected Public:* Individuals/Households, Business or Other For Profit; Not For Profit; State, Local, and Tribal Government. Respondent groups identified include: (1) FMNP participants who are women, infants, and children participating in the WIC Program; (2) authorized FMNP outlets which are farmers, farmers' markets, and roadside stands; (3) nonprofit businesses operating as local agencies; and (4) local and State agencies (including geographic States, U.S. Territories, and Indian Tribal Organizations (ITOs)) administering FMNP.

*Estimated Number of Respondents:* The total estimated number of respondents is 1,351,492. This includes 51 State agencies, 769 local agencies, 1,330,746 individuals/households (FMNP participants), 329 nonprofit businesses, and 19,597 authorized FMNP outlets (farmers, farmers' markets, roadside stands).

*Estimated Number of Responses per Respondent:* The total estimated number of responses per respondent for this collection is 3.07.

*Estimated Total Annual Responses:* 4,148,625. The estimated total for reporting is 2,814,962 while the estimate total for recordkeeping is 1,333,663.

*Estimated Time per Response:* The estimated time per response averages approximately 17 minutes (0.28 hours) for all respondents. For the reporting burden, the estimated time per response varies from 3 minutes to 40 hours, while the estimated time per response for the recordkeeping burden varies from 10 minutes to 40 hours, depending on the requirement.

*Estimated Total Annual Burden on Respondents:* 1,175,580 hours. The estimated total reporting burden is 839,123 hours while the estimated total recordkeeping burden is 336,457 hours.

See the table below for the estimated total annual burden for each type of respondent.

ESTIMATE OF THE COLLECTION OF INFORMATION BURDEN TABLE

| Regulatory section | Information collected | Form(s) | Estimated number of respondents | Annual responses per respondent | Total annual responses | Hours per response | Total annual burden hours |
|---|---|---|---|---|---|---|---|
| **REPORTING BURDEN ESTIMATES** | | | | | | | |
| **Affected Public: STATE & LOCAL AGENCIES (Including Indian Tribal Organizations and U.S. Territories)** | | | | | | | |
| 248.3(e), 246.5 | Local Agency Applications | | 768.60 | 0.50 | 384.30 | 2.00 | 768.60 |
| 248.4 | State Plan | | 51.00 | 1.00 | 51.00 | 40.00 | 2,040.00 |
| 248.6, 248.10(i) | Certification Data for Participants. | | 51.00 | 26,093.06 | 1,330,746.00 | 0.25 | 332,686.50 |
| 248.10(a)(2),(3),(b),(c) | Authorization—Review of Outlet Applications (Farmers, Farmers' Market, Roadside Stand). | | 51.00 | 192.13 | 9,798.50 | 0.25 | 2,449.63 |
| 248.10(a)(4)(d) | Face-to-Face Training Development. | | 51.00 | 1.00 | 51.00 | 8.00 | 408.00 |
| 248.10(a)(4)(d) | Face-to-Face Training | | 51.00 | 15.00 | 765.00 | 2.00 | 1,530.00 |
| 248.10(b)(5) | Disqualification of Authorized Outlets. | | 5.00 | 1.00 | 5.00 | 0.08 | 0.42 |
| 248.10(d) | Annual Training for Authorized Outlets Development. | | 51.00 | 1.00 | 51.00 | 8.00 | 408.00 |
| 248.10(d) | Annual Training for Authorized Outlets. | | 51.00 | 15.00 | 765.00 | 2.00 | 1,530.00 |
| 248.10(e)(2),(3); 248.17(c)(1)(i) | Monitoring/Review of Authorized Outlets. | | 51.00 | 38.43 | 1,959.70 | 1.50 | 2,939.55 |
| 248.10(e)(4); 248.17(c)(1)(ii) | Monitoring/Review of Local Agencies. | | 51.00 | 10.76 | 549.00 | 2.00 | 1,098.00 |
| 248.10(f) | Coupon Management System | | 51.00 | 1.00 | 51.00 | 5.00 | 255.00 |
| *248.10(h)* | *Coupon Reconciliation* | | | | | | *115.50* |
| 248.10(h) | Paper Coupon Reconciliation | | 26.00 | 1.00 | 26.00 | 3.00 | 78.00 |
| 248.10(h) | Electronic Benefit Reconciliation. | | 25.00 | 1.00 | 25.00 | 1.50 | 37.50 |
| 248.10(j) | Recipients and Authorized Outlet Complaints. | | 51.00 | 9.67 | 493.00 | 1.00 | 493.00 |
| 248.10(k) | Farmer/farmers' market sanctions. | | 51.00 | 7.69 | 391.94 | 0.08 | 32.73 |
| 248.11(a) | Disclosure of Financial Expenditures. | | 51.00 | 1.00 | 51.00 | 10.00 | 510.00 |
| 248.12(a)(2) | Prior approval for cost items per 2 CFR part 200, subpart E, and 2 CFR parts 400 and 415. | | 5.00 | 1.00 | 5.00 | 40.00 | 200.00 |
| 248.17(a) | Establishment of ME System | | 1.00 | 1.00 | 1.00 | 24.00 | 24.00 |
| 248.17(b)(2)(ii) | State Agency Corrective Action Plan. | | 7.00 | 1.00 | 7.00 | 10.00 | 70.00 |
| 248.17(c)(2) | Special Reports | | 2.00 | 1.00 | 2.00 | 10.00 | 20.00 |
| 248.18(b) | Audit Responses | | 1.00 | 1.00 | 1.00 | 15.00 | 15.00 |

ESTIMATE OF THE COLLECTION OF INFORMATION BURDEN TABLE—Continued

| Regulatory section | Information collected | Form(s) | Estimated number of respondents | Annual responses per respondent | Total annual responses | Hours per response | Total annual burden hours |
|---|---|---|---|---|---|---|---|
| Subtotal Reporting: State and Local Agencies (Including Indian Tribal Organizations and U.S. Territories). | ..... | ..... | 819.60 | 1,642.48 | 1,346,179.44 | 0.26 | 347,593.92 |
| **Affected Public: INDIVIDUALS/HOUSEHOLDS (Applicants for Program Benefits)** | | | | | | | |
| 248.6, 248.10(i) ..... | Certification Data for Participants. | ..... | 1,330,746.00 | 1.00 | 1,330,746.00 | 0.05 | 66,670.37 |
| Subtotal Reporting: Individuals/Households. | ..... | ..... | 330,746.00 | 1.00 | 330,746.00 | 0.05 | 66,670.37 |
| **Affected Public: Authorized Outlets (Farmers/Markets/Roadside Stands) and Businesses** | | | | | | | |
| 248.3(e), 246.5 ..... | Non-profit businesses Applications. | ..... | 329.40 | 0.50 | 164.70 | 2.00 | 329.40 |
| 248.10(a)(4)(d) ..... | Face-to-Face Training ..... | ..... | 1,959.70 | 1.00 | 1,959.70 | 2.00 | 3,919.40 |
| 248.10(b)(1)(xi) ..... | Farmer/farmers' market complaints. | ..... | 493.00 | 1.00 | 493.00 | 0.50 | 246.50 |
| 248.10(b),(c) ..... | Authorized Outlet Agreements | ..... | 9,799 | 1.00 | 9,798.50 | 0.08 | 818.17 |
| 248.10(b)(5) ..... | Appeal of Denial ..... | ..... | 7.84 | 1.00 | 7.84 | 2.00 | 15.68 |
| 248.10(d) ..... | Annual Training for Authorized Outlets. | ..... | 17,637.30 | 1.00 | 17,637.30 | 2.00 | 35,274.60 |
| *248.10(e)(1)* ..... | *Coupon Reimbursement* ..... | ..... | ..... | ..... | ..... | ..... | *384,254.90* |
| 248.10(e)(1) ..... | Paper Coupon Reimbursement & Electronic Benefit Mail-In. | ..... | 10,375 | 9.00 | 93,373.94 | 4.00 | 373,495.76 |
| 248.10(e)(1) ..... | Electronic Benefit Reimbursement via Hybrid Processing. | ..... | 769 | 9.00 | 6,916.59 | 1.00 | 6,916.59 |
| 248.10(e)(1) ..... | Electronic Benefit Reimbursement via Electronic Processing. | ..... | 7,685 | 1.00 | 7,685.10 | 0.50 | 3,842.55 |
| Subtotal Reporting: Authorized outlets. | ..... | ..... | 19,926.40 | 6.93 | 138,036.67 | 3.08 | 424,858.65 |
| GRAND SUBTOTAL: REPORTING. | ..... | ..... | 1,351,492.00 | 2.08 | 2,814,962.11 | 0.30 | 839,122.95 |
| **RECORDKEEPING BURDEN ESTIMATES** | | | | | | | |
| **Affected Public: STATE & LOCAL AGENCIES (Including Indian Tribal Organizations and U.S. Territories)** | | | | | | | |
| 248.4(c) ..... | State Plan Record Maintenance. | ..... | 51.00 | 1.00 | 51.00 | 0.17 | 8.52 |
| 248.9 ..... | Nutrition Education ..... | ..... | 51.00 | 26,093.06 | 1,330,746.00 | 0.25 | 332,686.50 |
| 248.10(a)(4),(d) ..... | Authorized Outlet Training Content. | ..... | 51.00 | 1.00 | 51.00 | 2.00 | 102.00 |
| 248.10(b),(c) ..... | Authorized Outlet Agreements | ..... | 51.00 | 1.00 | 51.00 | 2.00 | 102.00 |
| 248.10(b)(5) ..... | Maintenance of Disqualification and Sanction Records. | ..... | 51.00 | 1.00 | 51.00 | 0.17 | 8.52 |
| 248.10(e)(2),(3); 248.17(c)(1)(i) | Monitoring and Review of Authorized Outlets. | ..... | 51.00 | 38.43 | 1,959.70 | 0.50 | 979.85 |
| 248.10(e)(4); 248.17(c)(1)(ii) ... | Monitoring/Review of Local Agencies. | ..... | 51.00 | 10.76 | 549.00 | 0.50 | 274.50 |
| 248.11(c) ..... | Record of Financial Expenditures. | FNS–683B | 51.00 | 1.00 | 51.00 | 2.00 | 102.00 |
| 248.16(a) ..... | Fair Hearings ..... | ..... | 51.00 | 1.00 | 51.00 | 1.00 | 51.00 |
| 248.17(a) ..... | Maintenance of Management Evaluations. | ..... | 51.00 | 1.00 | 51.00 | 2.00 | 102.00 |
| 248.23(a) ..... | Record of Program Operations | ..... | 51.00 | 1.00 | 51.00 | 40.00 | 2,040.00 |
| GRAND SUBTOTAL: RECORDKEEPING. | ..... | ..... | 51.00 | 26,150.25 | 1,333,662.70 | 0.25 | 336,456.88 |
| GRAND TOTAL: REPORTING AND RECORDKEEPING. | ..... | ..... | 1,351,492.00 | 3.07 | 4,148,624.81 | 0.28 | 1,175,579.83 |

**Note:** FNS–683B, OMB Control Number: 0584–0594 Food Programs Reporting System (FPRS), Expiration Date: 09/30/2026.

SUMMARY TABLE

| | Estimated number respondents | Responses per respondent | Total annual responses | Estimated avg. number of hours per response | Estimated total hours (col. D × E) |
|---|---|---|---|---|---|
| Total Reporting Burden ..... | 1,351,492.00 | 2.08 | 2,814,962.11 | 0.30 | 839,122.95 |

SUMMARY TABLE—Continued

| | Estimated number respondents | Responses per respondent | Total annual responses | Estimated avg. number of hours per response | Estimated total hours (col. D × E) |
|---|---|---|---|---|---|
| Total Recordkeeping Burden ..... | 51.00 | 26,150.25 | 1,333,662.70 | 0.25 | 336,456.88 |
| TOTAL BURDEN FOR #0584–0447 .... | 1,351,492.00 | 3.07 | 4,148,624.81 | 0.28 | 1,175,579.83 |

**Tameka Owens,**

*Assistant Administrator, Food and Nutrition Service.*

[FR Doc. 2023–26659 Filed 12–4–23; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Pacific Northwest National Scenic Trail Advisory Council

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Pacific Northwest National Scenic Trail Advisory Council will hold a public meeting according to the details shown below. The Council is authorized under the National Trails System Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the Council is to advise and make recommendations to the Secretary of Agriculture, through the Chief of the Forest Service, on matters relating to the Pacific Northwest National Scenic Trail as described in the Act.

**DATES:** Two virtual half-day meetings will be held on January 16, 2024, and January 17, 2024, 10:00 a.m.–1:00 p.m. each day, Pacific Standard Time (PST).

*Written and Oral Comments:* Anyone wishing to provide virtual oral comments must pre-register by 11:59 p.m. PST on January 9, 2024. Written public comments will be accepted up to 11:59 p.m. PST on January 9, 2024. Comments submitted after this date will be provided to the Forest Service, but the Council may not have adequate time to consider those comments prior to the meeting.

All council meetings are subject to cancellation. For status of the meetings prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** This meeting will be held virtually via the Zoom app or the internet using the link posted on the Pacific Northwest Trail Advisory Council Meetings web page: *https://www.fs.usda.gov/detail/pnt/working-together/advisory-committees/?cid=fseprd505622,* and the public may also join virtually via the Zoom app or the internet using the same link. Council information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/pnt/working-together/advisory-committees/?cid=fseprd505622 or* by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Written Comments:* Written comments must be sent by email to *jeffrey.kitchens@usda.gov or* via mail (*i.e.,* postmarked) to *Jeffrey Kitchens,* 1220 Southwest Third Avenue, Suite 1700, Portland, Oregon 97204. The Forest Service strongly prefers comments be submitted electronically.

*Oral Comments:* Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. PST, January 9, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *jeffrey.kitchens@usda.gov* or via mail (*i.e.,* postmarked) to Jeffrey Kitchens, 1220 Southwest Third Avenue, Suite 1700, Portland, Oregon 97204.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Kitchens, Designated Federal Officer (DFO), by phone at 458–899–6185 or by email at *jeffrey.kitchens@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the meetings is to:

1. Approve meeting minutes;
2. Discuss implementation of the comprehensive plan for the Pacific Northwest Trail; and
3. Discuss and identify future Pacific Northwest National Scenic Trail Advisory Council activity;

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 14 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

*Meeting Accommodations:* The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at (202) 720–2600 (voice and TTY) or USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Council. To ensure that the recommendations of the Council have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: November 30, 2023.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2023–26656 Filed 12–4–23; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Request Approval To Revise and Extend an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request approval to revise and extend a currently approved information collection, the Milk and Milk Products Surveys. Revision to burden hours will be needed due to changes in the size of the target population, sample design, and/or questionnaire length.

**DATES:** Comments on this notice must be received by February 5, 2024 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535–0020, by any of the following methods:

- *Email: omb officer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Efax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: Richard Hopper, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250–2024.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Parsons, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333. Copies of this information collection and related instructions can be obtained without charge from Richard Hopper, NASS Clearance Officer, at (202) 720–2206.

**SUPPLEMENTARY INFORMATION:**

*Title:* Milk and Milk Products Surveys.

*OMB Control Number:* 0535–0020.

*Expiration Date of Approval:* June 30, 2024.

*Type of Request:* To revise and extend a currently approved information collection for a period of three years.

*Abstract:* The primary objective of the National Agricultural Statistics Service (NASS) is to collect, prepare and issue State and national estimates of crop and livestock production, prices and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. The Milk and Milk Products Surveys obtain basic agricultural statistics on milk production and manufactured dairy products from farmers and processing plants throughout the nation. Data are gathered for milk production, dairy products, evaporated and condensed milk, manufactured dry milk, and manufactured whey products. Milk production and manufactured dairy products statistics are used by the U.S. Department of Agriculture (USDA) to help administer federal programs and by the dairy industry in planning, pricing, and projecting supplies of milk and milk products. Only minor changes are planned for the questionnaires and sample sizes. The Milk Production Survey will continue to be conducted quarterly (January, April, July, and October) and monthly estimates for the non-quarterly months will still be published for the total number of dairy cows, the number of cows milked, and the total milk produced. Estimates for the non-survey months will be generated by using a combination of administrative data, regression modeling, and historic data. In April 2012 NASS discontinued the collection of Dairy Product Prices. This data is now collected by the Agricultural Marketing Service (AMS) in compliance with the Mandatory Price Reporting Act of 2010, and the amended section 273(d) of the Agricultural Marketing Act of 1946.

*Authority:* Voluntary dairy information reporting is conducted under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985 (7 U.S.C. 2276), which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Mandatory dairy product information reporting is based on the Agricultural Marketing Act of 1946, as amended by the Dairy Market Enhancement Act of 2000 and the Farm Security and Rural Development Act of 2002 (U.S.C. 1637–1637b). This program requires each manufacturer to report to USDA the price, quantity, and moisture content of dairy products sold and each entity storing dairy products to report information on the quantity of dairy products stored. Any manufacturer that processes, markets, or stores less than 1,000,000 pounds of dairy products per year is exempt. USDA is required to maintain information, statistics, or documents obtained under these Acts in a manner that ensures that confidentiality is preserved regarding the identity of persons and proprietary business information, subject to verification by the Agricultural Marketing Service (AMS) under Public Law 106–532. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320. All NASS employees and NASS contractors must also fully comply with all provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2018, title III of Public Law 115–435, codified in 44 U.S.C. Ch. 35. CIPSEA supports NASS's pledge of confidentiality to all respondents and facilitates the agency's efforts to reduce burden by supporting statistical activities of collaborative agencies through designation of NASS agents, subject to the limitations and penalties described in CIPSEA. NASS uses the information only for statistical purposes and publishes only tabulated total data.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average approximately 13 minutes per response. This average is based on the 7 different surveys in the information collection: 2 monthly, 4 quarterly, and 1 annual. The estimated total number of responses is 65,500 annually, with an average annual frequency of 4.30 responses per respondent. NASS will continue to use cover letters to explain the importance and uses of this data series along with how the respondent can access and report their data using the secure internet connection that NASS is using.

*Respondents:* Farms and businesses.

*Estimated Number of Respondents:* 14,950.

*Estimated Total Annual Burden on Respondents:* 11,435 hours.

*Comments:* Comments are invited on: (a) 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; (b) 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; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or

other forms of information technology collection methods. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, November 15, 2023.

**Joseph L. Parsons,**

*Associate Administrator.*

[FR Doc. 2023–26692 Filed 12–4–23; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–61–2023]**

### Foreign-Trade Zone (FTZ) 26, Notification of Proposed Production Activity; Mohawk Carpet Distribution, LLC; (Machine-Made Woven and Tufted Rugs of Polypropylene); Calhoun and Sugar Valley, Georgia

Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, submitted a notification of proposed production activity to the FTZ Board (the Board) on behalf of Mohawk Carpet Distribution, LLC (Mohawk), located in Calhoun and Sugar Valley, Georgia, within FTZ 26. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 28, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz*.

The proposed finished products include machine-made rugs of polypropylene (woven with pile, woven without pile, and tufted) (duty rate ranges from duty-free to 6%).

The proposed foreign-status material/component is continuous filament polypropylene (CFPP) yarn (single-ply and multi-ply (twisted or cabled)) (duty rate is 8.8% and 8%, respectively). The request indicates that the material/component is subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41). As requested, FTZ authority would be subject to the following restrictions: (1) the annual volume of CFPP yarn that Mohawk may admit into the proposed subzone under NPF status be limited to 2.9 million kilograms, and (2) any approval be limited to five years.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is January 16, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov*.

Dated: November 29, 2023.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2023–26621 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–62–2023]**

### Foreign-Trade Zone (FTZ) 183, Notification of Proposed Production Activity; Flextronics America, LLC; (Automated Data Processing Machines); Austin, Texas

Flextronics America, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Austin, Texas within Subzone 183C. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on November 28, 2023.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz*. The proposed material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed foreign-status materials and components include: plastic packaging bags, bubble wrap, cushions, and end caps; printed paper labels; and, paper and paperboard cardboard packaging cushions and dividers (duty rate ranges from duty-free to 3.0%). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301), depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is January 16, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov*.

Dated: November 29, 2023.

**Elizabeth Whiteman,**

*Executive Secretary.*

[FR Doc. 2023–26620 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Steel Import License

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 26, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* International Trade Administration, Department of Commerce.

*Title:* Steel Import License.

*OMB Control Number:* 0625–0245.

*Form Number(s):* ITA–4141P.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 4,250.

*Average Hours per Response:* Less than 10 minutes.

*Burden Hours:* 78,820 hours, including 416 burden hours for low-value licenses.

*Needs and Uses:* In order to monitor steel imports in real-time and to provide the public with real-time data, the Department of Commerce must collect and provide timely aggregated summaries about these imports. The Steel Import License is the tool used to collect the necessary information. The Census Bureau currently collects import data and disseminates aggregate information about steel imports. However, the time required to collect, process, and disseminate this information through Census can take up to 45 days after importation of the product, giving interested parties and the public far less time to respond to injurious sales.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* 13 U.S.C. 301(a) and 302.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0625–0245.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–26665 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–560–826]**

### Monosodium Glutamate From the Republic of Indonesia: Final Results of Antidumping Duty Administrative Review; 2021–2022

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that PT. Cheil Jedang Indonesia (CJ Indonesia) and PT. Miwon Indonesia (PT. Miwon) made sales of subject merchandise below normal value. The period of review (POR) is November 1, 2021, through October 31, 2022.

**DATES:** Applicable December 5, 2023.

**FOR FURTHER INFORMATION CONTACT:** Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4261.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 31, 2023, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty order on monosodium glutamate (MSG) from the Republic of Indonesia (Indonesia).[1] We invited interested parties to comment on the *Preliminary Results;* however, no interested party submitted comments.[2] Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Order [3]

The merchandise covered by this order is MSG, whether or not blended or in solution with other products. Specifically, MSG that has been blended or is in solution with other product(s) is included in this order when the resulting mix contains 15 percent or more of MSG by dry weight. Products with which MSG may be blended include, but are not limited to, salts, sugars, starches, maltodextrins, and various seasonings. Further, MSG is included in this order regardless of physical form (including, but not limited to, in monohydrate or anhydrous form, or as substrates, solutions, dry powders of any particle size, or unfinished forms such as MSG slurry), end-use application, or packaging.

MSG in monohydrate form has a molecular formula of C5H8NO4Na -H2O, a Chemical Abstract Service (CAS) registry number of 6106–04–3, and a Unique Ingredient Identifier (UNII) number of W81N5U6R6U. MSG in anhydrous form has a molecular formula of C5H8NO4 Na, a CAS registry number of l42–47–2, and a UNII number of C3C196L9FG.

Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2922.42.10.00. Merchandise covered by this order may also enter under HTSUS subheadings 2922.42.50.00, 2103.90.72.00, 2103.90.74.00, 2103.90.78.00, 2103.90.80.00, and 2103.90.90.91. These tariff classifications, CAS registry numbers, and UNII numbers are provided for convenience and customs purposes; however, the written description of the scope is dispositive.

#### Final Results of Review

As a result of this administrative review, we determine the following weighted-average dumping margins for the period November 1, 2021, through October 31, 2022:

| Manufacturer/exporter | Weighted-average dumping margin (percent) |
|---|---|
| PT. Cheil Jedang Indonesia ..... | * 58.67 |
| PT. Daesang Ingredients Indonesia and PT. Miwon Indonesia [4] ..... | * 58.67 |

* Rate based on adverse facts available.

#### Disclosure

Because Commerce received no comments on the *Preliminary Results,* we have not modified our analysis, and no decision memorandum accompanies this **Federal Register** notice. We are adopting the *Preliminary Results* as the final results of this review. Consequently, there are no new calculations to disclose in accordance with 19 CFR 351.224(b) for these final results of review.

#### Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in

[1] *See Monosodium Glutamate from the Republic of Indonesia: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 49437 (July 31, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Preliminary Results,* 88 FR 49437.

[3] *See Monosodium Glutamate from the People's Republic of China, and the Republic of Indonesia: Antidumping Duty Orders; and Monosodium Glutamate from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value,* 79 FR 70505 (November 26, 2014) (*Order*).

[4] On August 26, 2022, Commerce published the final results of a changed circumstances review of MSG from Indonesia. Commerce found that PT. Daesang Ingredients Indonesia (PT. Daesang) is the successor-in-interest to PT. Miwon. *See Monosodium Glutamate from the Republic of Indonesia: Final Results of Changed Circumstances Review,* 87 FR 52506 (August 26, 2022). Because the effective date of this decision was during the POR, we continue to reference the respondent here as PT. Miwon. Cash deposits of estimated antidumping duties required pursuant to the final results of this review will be applied to PT. Daesang. Liquidation instructions for the POR will be issued for PT. Daesang/PT. Miwon.

accordance with the final results of this administrative review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise that entered the United States during the POR that were produced by CJ Indonesia or PT. Miwon for which the respondent did not know that its merchandise sold to an intermediary was destined for the United States, Commerce will instruct CBP to liquidate unreviewed entries at the all-others rate of 6.19 percent,[5] if there is no rate for the intermediate company(ies) involved in the transaction.[6]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the notice of the final results of this administrative review for all shipments of MSG from Indonesia entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) for the companies covered by this review, the cash deposit rate will be the rates listed above in the section ''Final Results of Review''; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in a completed segment for the most recent POR; (3) if the exporter is not a firm covered in this review or in the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.19 percent, the all-others rate established in the investigation.[7] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

Commerce is issuing and publishing this notice of final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h)(1) and 19 CFR 351.221(b)(5).

Dated: November 28, 2023.

**Abdelali Elouaradia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2023–26622 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–DS–P**

[5] *See Monosodium Glutamate from the Republic of Indonesia: Final Determination of Sales at Less Than Fair Value,* 79 FR 58329 (September 29, 2014) (*MSG from Indonesia Investigation Final Determination*).

[6] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[7] *See MSG from Indonesia Investigation Final Determination.*

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Open Meeting of the Internet of Things Advisory Board

**AGENCY:** National Institute of Standards and Technology (NIST).

**ACTION:** Notice of open meeting.

**SUMMARY:** The Internet of Things (IoT) Advisory Board will meet Tuesday, January 23 and Wednesday, January 24, 2024 from 11 a.m. until 5 p.m., eastern time. Both sessions will be open to the public.

**DATES:** The Internet of Things (IoT) Advisory Board will meet Tuesday, January 23 and Wednesday, January 24, 2024 from 11 a.m. until 5 p.m., eastern time.

**ADDRESSES:** The meeting will be virtual via Webex webcast hosted by the National Cybersecurity Center of Excellence (NCCoE) at NIST. Please note registration instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Barbara Cuthill, Information Technology Laboratory, National Institute of Standards and Technology, Telephone: (301) 975–3273, Email address: *barbara.cuthill@nist.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the IoT Advisory Board will hold open meetings on Tuesday, January 23 and Wednesday, January 24, 2024 from 11 a.m. until 5 p.m., eastern time. Both sessions will be open to the public. The IoT Advisory Board is authorized by section 9204(b)(5) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283) and advises the IoT Federal Working Group convened by the Secretary of Commerce pursuant to section 9204(b)(1) of the Act on matters related to the Federal Working Group's activities. Details regarding the IoT Advisory Board's activities are available at *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

The agenda for the January 2024 meeting is expected to focus on final editing the IoT Advisory Board's report for the IoT Federal Working Group and the recommendations in that report.

The recommendations and discussions are expected to focus on the specific focus areas for the report cited in the legislation and the charter:

- Smart traffic and transit technologies
- Augmented logistics and supply chains
- Sustainable infrastructure
- Precision agriculture
- Environmental monitoring
- Public safety
- Health care

In addition, the IoT Advisory Board may discuss other elements that the legislation called for in the report:

- whether adequate spectrum is available to support the growing Internet of Things and what legal or regulatory barriers may exist to providing any spectrum needed in the future;

- policies, programs, or multi-stakeholder activities that—
  - promote or are related to the privacy of individuals who use or are affected by the Internet of Things;
  - may enhance the security of the Internet of Things, including the security of critical infrastructure;
  - may protect users of the Internet of Things; and
  - may encourage coordination among Federal agencies with jurisdiction over the Internet of Things

Note that agenda items may change without notice. The final agendas will be posted on the IoT Advisory Board web page: *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

*Public Participation:* Written comments and requests to present comments orally to the IoT Advisory Board from the public are invited and may be submitted electronically by email to Barbara Cuthill at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. on the Tuesday, January 16, 2024 to allow distribution of written comments to IoT Advisory Board members prior to the meeting. Each IoT Advisory Board meeting agenda will include a period, not to exceed sixty minutes, for oral presentation of comments from the public. Oral presentation of comments from the public during this sixty-minute period will be accommodated on a first-come, first-served basis and limited to five minutes per person for oral presentation if requested by the commenter. Members of the public who wish to expand upon their submitted comments, those who had wished to present comments orally but could not be accommodated on the agenda, and those who were unable to attend the meeting via webinar, are invited to submit written statements. In addition, written statements are invited and may be submitted to the IoT Advisory Board at any time. All written statements should be directed to the IoT Advisory Board Secretariat, Information Technology Laboratory by email to: *Barbara.Cuthill@nist.gov.*

*Admittance Instructions:* Participants planning to attend via webinar must register via the instructions found on the IoT Advisory Board's web page at *https://www.nist.gov/itl/applied-cybersecurity/nist-cybersecurity-iot-program/internet-things-advisory-board.*

**Tamiko Ford,**

*NIST Executive Secretariat.*

[FR Doc. 2023–26576 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Region Logbook and Activity Family of Forms

**AGENCY:** National Oceanic & Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before February 5, 2024.

**ADDRESSES:** Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0213 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Amy Hadfield, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, (907) 586–7376, *amy.hadfield@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

NMFS, Alaska Region (NMFS AKR), is requesting renewal of this currently approved information collection that consists of paper logbooks and reports used for management of the groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) and the Gulf of Alaska (GOA), management of the Individual Fishing Quota halibut and sablefish fisheries, and management of the BSAI Crab Rationalization Program crab fisheries. NMFS AKR manages the groundfish and crab fisheries in the exclusive economic zone (EEZ) of the BSAI and the groundfish fisheries of the GOA under fishery management plans (FMPs) for the respective areas. The North Pacific Fishery Management Council prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR parts 679 and 680. Regulations for the logbooks and reports in this information collection are at 50 CFR 679.5.

The information collected through the paper logbooks and reports promotes the goals and objectives of the FMPs, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws. The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources.

Collecting information from fishery participants is necessary to promote successful management of groundfish, crab, Pacific halibut, and salmon resources. A comprehensive information system that identifies the participants and monitors their fishing activity is necessary to enforce the management measures and prevent overfishing. An information system is also needed to measure the consequences of management controls. This collection supports an effective monitoring and enforcement system with information that includes identification of the participating vessels, operators, dealers, and processors; location of the fishing activity; timeframes when fishing and processing is occurring; and shipment and transfer of fishing products.

Shoreside processors, stationary floating processors, and motherships receiving EEZ-caught fish and all vessels of the United States harvesting EEZ fish are required to hold a Federal permit and thus comply with reporting requirements per CFR 679.5. The data collected are used for making in-season and inter-season management decisions that affect the groundfish resources and the fishing industry that uses them.

This information collection contains four components: Paper logbooks, vessel activity reports, check-in/check-out reports, and product transfer reports.

• Daily logbooks provide data about the location and timing of fishing effort, as well as discard information of prohibited species. NOAA Office for Law Enforcement (OLE) and the United States Coast Guard (USCG) use logbook information during vessel boardings and site visits to ensure conservation of groundfish, compliance with regulations, and reporting accuracy by the fishing industry. The logbooks are also an important source of information for NMFS to determine where and when fishing activity occurs and the number of sets and hauls.

• Vessel activity reports provide information about fish or fish product on board a vessel when it crosses the boundary of the EEZ off Alaska or crosses the U.S.—Canada international boundary between Alaska and British Columbia. NOAA OLE and USCG boarding officers use this information to audit and separate product inventory when boarding a vessel.

• Check-in/check-out reports provide information on participation by processors and motherships in the groundfish fisheries. The check-in/check-out information is used by NMFS in-season managers to monitor the fishing capacity and effort in fishery allocations and quotas. Additionally, NOAA OLE agents use this information to track commercial business activity and ensure accurate accountability and proper reporting is being performed.

• Product transfer reports provide information on the volume of groundfish disposed of by persons buying it from the harvesters. The product transfer report is an important enforcement document and provides an important check on buyer purchase reports. Information collected on product transfer reports is used by NOAA OLE to verify the accuracy of reported shipments through physical inspections. NOAA OLE uses the product transfer report to monitor movement of product in and out of the processor on a timely basis.

**II. Method of Collection**

Paper logbooks are submitted by mail or delivery. The Vessel Activity Report, Product Transfer Report, and Check-in/Check-out Reports are submitted by email or fax.

**III. Data**

*OMB Control Number:* 0648–0213.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Individuals or households; Business or other for-profit organizations.

*Estimated Number of Respondents:* 289.

*Estimated Time per Response:* Catcher Vessel Trawl DFL: 18 minutes; Catcher Vessel Longline/Pot DFL: 35 minutes; Catcher/Processor Longline/Pot DCPL: 50 minutes; Shoreside Processor Check-in/Check-out Report: 5 minutes; Mothership Check-in/Check-out Report: 7 minutes; Product Transfer Report: 20 minutes; Vessel Activity Report: 14 minutes.

*Estimated Total Annual Burden Hours:* 13,706 hours.

*Estimated Total Annual Cost to Public:* $5,875 in recordkeeping and reporting costs.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Magnuson-Stevens Fishery Conservation and Management Act.

**IV. Request for Comments**

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) 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; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–26678 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Processed Products Family of Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on July 26, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration (NOAA), Commerce.

*Title:* Processed Products Family of Forms.

*OMB Control Number:* 0648–0018.

*Form Number(s):* NOAA Forms 88–13, 88–13C.

*Type of Request:* Regular submission (extension of a current information collection).

*Number of Respondents:* 240.

*Average Hours per Response:* 30 minutes per response (0.5 hours).

*Total Annual Burden Hours:* 135.

*Needs and Uses:* This request is for extension of a currently approved information collection. This family of surveys provides necessary information on the seafood processing sector including volume of seafood products produced and their value. This data aids in gauging the industry and provides the basis for economic and scientific analyses.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Form 88–13—Annual; Form 88–13c—Monthly.

*Respondent's Obligation:* Mandatory for some Federal Permit holders, otherwise voluntary.

*Legal Authority:* Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the

Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0018.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–26674 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Groundfish Trawl Economic Data

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on March 23, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration (NOAA), Commerce.

*Title:* West Coast Groundfish Trawl Economic Data.

*OMB Control Number:* 0648–0618.

*Form Number(s):* None.

*Type of Request:* Regular (extension of a currently approved information collection).

*Number of Respondents:* 361.

*Average Hours per Response:* 8 hours for catcher processors, catcher vessels, and motherships, 1 hour for quota share permit owners, and 20 hours for first receivers and shore-based processors.

*Total Annual Burden Hours:* 2,236.

*Needs and Uses:* This request is for revision and renewal of a currently approved information collection. This information collection is needed in order to meet the monitoring requirements of the Magnuson-Stevens Act (MSA). In particular, the Northwest Fisheries Science Center (NWFSC) needs economic data on all harvesters, quota share permit owners, first receivers, shore-based processors, catcher processors, and motherships participating in the West Coast groundfish trawl fishery. Data will be collected from all catcher vessels registered to a limited entry trawl endorsed permit, quota share permit owners, catcher processors registered to catcher processor permits, motherships registered to mothership permits, first receivers, and shore based processors that received round or head-and-gutted IFQ groundfish or whiting from a first receiver to provide the necessary information for analyzing the effects of the West Coast Groundfish Trawl Catch Share Program.

Changes are being proposed to three forms: the quota share owner form, the first receiver and shore-based processor form, and the catcher vessel form. Two changes are proposed for the quota share owner form. First, the question ''Is this permit owned solely by a non-profit?'' will be removed from the survey as it was determined that sufficient information is available from other sources to make this question redundant. The second proposed change is to replace the survey's third question with a series of shorter questions guiding the participant to provide the correct information. This change will clarify which information should be reported for each type of respondent and will reduce the need for lengthy instructions section describing how the participant should answer. The series of questions are:

A. ''Which types of quota transactions were associated with QSXXXX in 20XX? Check all that apply'' This question helps the participant determine whether any earnings need to be reported on the survey. If appropriate categories are checked, they will be asked question B.

B. ''How much did this quota share account earn from leasing quota in year 20XX?'' Participants will answer this question with a dollar amount. To ensure there is no duplicate reporting, participants will be asked question C:

C. ''Did you record any earnings from 20XX quota leasing on an EDC form?'' If participants answer ''No,'' they will be prompted to affirm that their response to question B was correct and submit the survey. If they answer ''Yes,'' they will be asked to respond to question D.

D. ''How much in quota lease earnings did you record on your EDC form(s)? Participants will answer with a numerical value and proceed to question E.

E. ''Please confirm your total quota lease earnings in 20XX was 'Response to question B + 'Response to question D.' After confirming, participants will then submit the survey.

We anticipate no additional burden with this change because the new structure of the survey will generate fewer incorrect responses and survey administrators will no longer need to contact participants outside of the survey to confirm that they did not provide duplicate responses across survey forms.

First receiver and shore-based processor form changes are more extensive. The purpose of the changes is fivefold: remove requests for information that are not used in development of a Pacific Fishery Management Council Fishery Management Plan, consolidate questions where additional detail is no longer required, clarify handling of intercompany transfers and inventory, collect more accurate information about hourly wages, obtain information about services provided by first receivers to vessels.

First, we propose a complete removal of Question 18: ''Provide the following information about the landing origin of groundfish received at this facility.'' Throughout the eleven years of the program, these data have not been used in the Council process and we do not anticipate using this information in the future.

Second, we propose consolidating the fishery-level detail requests from Question 19: ''Fish Received. In the table below provide the weight and cost of fish received.'' For groundfish species, the existing form requests weight not paid for, weight paid for, and cost of fish by species group for three fisheries (LE Trawl, LE Fixed Gear, and Other) as well as Non-vessel sources. In the revised form, the table will be consolidated to only request Vessel sources and Non-vessel sources. This will be a net reduction of 72 data entry cells on the form (12 species groups × removal of 2 fisheries × 3 fields). We will no longer request this information because fishery-detail information can be obtained from other sources.

Third, we propose revising how intercompany transfers and inventory are reported on the form. Similar to the

quota share owner survey, there are extensive instructions on handling these two topics, but reporting errors are extremely common. To facilitate accurate reporting of intercompany transfers, we will remove a column dedicated to transfer information from Question 19 and remove instructions about recording transfers in Question 20. Then, all of the transfer-related information will be moved to a separate question/table. This change will make the survey instructions easier to understand, allow companies that do not have intercompany transfers to skip the question entirely, and will make it easier to detect and remedy mistakes. Similarly, there are extensive instructions on how to record inventory in Question 20 on the existing form, but no dedicated field for inventory. Instead, participants are currently instructed to add inventory to the other sales categories. We propose adding a new line for each species group to record the inventory volume and value. Similar to the changes to transfers in Question 19 and 20, the new structure of Question 20 clarifies how to complete the form and facilitates identifying and resolving errors. Finally, this change will provide new important information about inventory volumes across years, providing better information about the status of the processing sector to the Pacific Fishery Management Council.

A common performance metric for fisheries programs is hourly wage payments to processing workers. In the current form, we request the total number of workers and total hours worked for the week that includes the 12th of each month and total annual compensation payments. To calculate hourly wages, we must extrapolate to the total hours worked for the year. Through conversations with participants, it has become apparent that within-month employment can have high variability and our extrapolations are not always accurate. We propose requesting the equivalent compensation value for each of the one-week windows to allow for a more accurate calculation of hourly wages. This additional field will also allow us to generate an estimate of within-month employment variability.

Lastly, through conversations with first receivers and vessels, it is known that first receivers provide services to vessels such as bait, ice, loans, moorage, and storage. We plan to add a new category to capture whether those services are provided and whether the vessels are charged for those services. This information will help answer questions often posed by external reviewers when evaluating studies conducted using the data collected in these surveys.

There are two proposed changes to the Catcher Vessel survey form. The first is to remove two questions. In 2018, at the request of participants in the trawl catch share program, two additional questions were added, Question 17: ''Do you track capitalized expenditures and expenses on fishing gear by type (*e.g.,* midwater trawl gear, groundfish bottom trawl gear)?'' and Question 18: ''Provide the 2021 total capitalized expenditures and expenses associated with each type of fishing gear used in West Coast Fisheries (Washington, Oregon, and California).'' Since the implementation of the questions in 2018, there has only been one ''Yes'' out nearly 700 total responses to Question 17 and therefore no further information about gear-specific costs have been collected. Therefore, there will be no information loss associated with removal of these two questions and there may be a small reduction in total burden hours.

The second proposed change to the Catcher vessel survey form also applies to the Catcher Processor and Mothership forms. This change adds a four-part question about vessel financing. The questions are whether there were any loans on the vessel, how much was still owed at the end of the fiscal year, total amount paid to interest, and total amount paid to principal. The purpose of this new question is to collect the necessary information to comply with recent NOAA fisheries guidance on calculation of net returns of fishing businesses.

*Affected Public:* Business or other for-profit organizations; not-for-profit institutions.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* 50 CFR 660.114.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0618.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.*

[FR Doc. 2023–26661 Filed 12–4–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

**[Docket Number DARS–2023–0017; OMB Control Number 0704–0246]**

### Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; Part 245, Government Property

**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 collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by January 4, 2024.

**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) Part 245, Government Property, related clauses in DFARS 252, and related forms in DFARS 253; OMB Control Number 0704–0246.

*Type of Request:* Revision of a currently approved collection.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Number of Respondents:* 3,513.

*Annual Responses:* 454,184.

*Annual Burden Hours:* 47,659.

*Reporting Frequency:* On Occasion.

*Needs and Uses:* DoD has consolidated the information collection requirements for reporting Government-furnished property into a single clause at DFARS 252.245–70XX, Management and Reporting of Government Property. The clause implements an electronic process for the collection of required information for effective management and oversight of Government property. The consolidated clause does not impose any new information collection requirements; rather, it consolidates existing requirements in one location. As a result of the consolidation of Government-furnished property reporting requirements under DFARS 252.245–70XX, two associated OMB Control Numbers will be discontinued, as the reporting requirements are now included in this revision for OMB Control Number 0704–0246. The OMB Control Numbers to be discontinued are 0704–0398, DFARS Part 211, Describing Agency Needs and related clause at 252.211; and 0704–0557, DFARS Part 245, Use of the Government Property Clause for Repair of Government-furnished Property (GFP).

The revised information collection includes the following:

- DFARS clause 252.245–70XX, paragraph (b)(1), streamlines reporting of GFP requirements under the GFP module of the Procurement Integrated Enterprise Environment (PIEE) eBusiness platform. The paper form DD Form 1348–1A, Issue Release/Receipt Document, used when authorized by the plant clearance officer and outside the continental United States (OCONUS) for turn-ins to the Defense Logistics Agency disposal activities, is no longer necessary; the electronic equivalent data requirements are generated through the GFP Module of the PIEE.
- DFARS clause 252.245–70XX, paragraph (k), provides procedures for disposal of scrap. The DD Form 1639, Scrap Warranty, is completed by individuals or firms that purchase Government property for its material content from a Government contractor. The DD Form 1639, addressed in 252.245–70XX, paragraph (k)(2), is used for the sole purpose of having the purchasers warrant that the property they have purchased will be used only as scrap.
- DFARS 252.245–70XX, paragraph (l), provides procedures for sale of surplus contractor inventory.
- DFARS clause 252.245–7003, Contractor Property Management System Administration. This clause addresses the requirement for certain contractors to respond in writing to an initial or final determination from the administrative contracting officer that identifies deficiencies in the contractor's property management system. This clause is not part of the 252.245–70XX consolidation; however it continues to be covered under the OMB Control Number for this information collection.

DoD uses this information for management and oversight of Government-furnished property. DFARS clause 252.245–70XX strengthens the accountability and end-to-end traceability of Government property within DoD.

*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. 2023–26626 Filed 12–4–23; 8:45 am]

**BILLING CODE 6001–FR–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0203]**

### Agency Information Collection Activities; Comment Request; Work Colleges Expenditure Report

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before February 5, 2024.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2023–SCC–0203. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

**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:* Work Colleges Expenditure Report.

*OMB Control Number:* 1845–0152.

*Type of Review:* Extension without change of a currently approved ICR.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 10.

*Total Estimated Number of Annual Burden Hours:* 20.

*Abstract:* The Higher Education Opportunity Act, Public Law 110–315, established the allocation of Federal Work Study funds to recognize, encourage, and promote the use of comprehensive work-learning service programs as part of a financial plan which decreases reliance on grants and loans. The Work Colleges Program is one of the three Federal Work-Study Programs. The other two Federal Work-Study Programs are the Federal Work-Study (FWS) Program and the Job Location and Development (JLD) Program. This is a request for an extension without change of the current information collection. The participants are required to report expenditure of funds annually. The data collected is used by the Department to monitor program effectiveness and accountability of fund expenditures. The data is used in conjunction with institutional program reviews to assess the administrative capability and compliance of the applicant.

Dated: November 29, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–26598 Filed 12–4–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0170]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; School Pulse Panel 2024–25 Preliminary Field Activities

**AGENCY:** National Center for Education Sciences (NCES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before January 4, 2024.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Carrie Claraday, 202–245–6347.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* School Pulse Panel 2024–25 Preliminary Field Activities.

*OMB Control Number:* 1850–0969.

*Type of Review:* A revision of a currently approved ICR.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 6,339.

*Total Estimated Number of Annual Burden Hours:* 2,551.

*Abstract:* The School Pulse Panel (SPP) is a data collection originally designed to collect repeated voluntary responses from a nationally representative sample of public schools to better understand how schools, students, and educators are responding to the ongoing stressors of the coronavirus pandemic. The School Pulse Panel is conducted by the National Center for Education Statistics (NCES), part of the Institute of Education Sciences (IES), within the United States Department of Education. Due to the immediate need to collect information from schools during the pandemic to satisfy the requirement of Executive Order 14000, an emergency clearance was issued to develop and field the first several monthly collections of the SPP in 2021 and a full review of the SPP data collection was performed under the traditional clearance review process in 2022 (OMB# 1850–0969). SPP's innovative design and timely dissemination of findings have been used and cited frequently among Department of Education senior leadership, the White House Domestic Policy Counsel, the USDA's Food and Nutrition Service, the Centers for Disease Control and Prevention, Congressional deliberations, and the media. The ongoing interest by stakeholders has resulted in dedicated funding to continue the SPP as an ongoing, quick-turnaround data collection vehicle.

For the 2024–25 school year, the survey may ask school staff about a wide range of topics, including but not limited to instructional mode offered; enrollment counts of subgroups of students for various subject interests; strategies to address learning recovery; safe and healthy school mitigation strategies; mental health services; use of technology; information on staffing, nutrition services, absenteeism, usage of federal funds, facilities, and overall principal experiences. It is planned that content will be rotated in and out monthly. This package includes preliminary activities, including a generic special district application and communication materials for district and school recruitment, that will be conducted to help with recruitment efforts for the 2024–25 sample.

Roughly 8,000 public elementary, middle, high, and combined-grade schools will be randomly selected to participate in a panel. The goal will be national representation from 1,000 responding schools in order to report out national estimates. School staff will be asked to provide requested data monthly during the 2024–25 school year. This approach provides the ability to collect detailed information on various topics while also assessing changes over time for items that are repeated from month to month. Given the high demand for data collection during this time, the content of the survey will change monthly.

This request is to conduct the SPP 2024–25 preliminary activities, including contacting and obtaining research approvals from public school districts with an established research approval process (''special contact districts''), where applicable, notifying sampled schools of their selection for the survey and inviting them to complete short Screener Surveys to establish a point of contact at their school. Additional materials may be added to this package after the 60-day public comment period is complete, in

time for the subsequent 30-day public comment period that will begin in December 2023/January 2024. In spring of 2024, a clearance for main study data collection activities with schools and districts, including instruments for the first quarter of monthly collections, will be submitted 60-day and 30-day public comment. Subsequent quarterly content submissions will be submitted for 30-day public comment. Because the School Pulse Panel Survey is designed to collect data on timely questions, materials for SPP are cleared under two OMB Number sequences. Materials for SPP 2022 were cleared under OMB# 1850–0969, while 23–24 SPP were cleared primarily under OMB# 1850–0975. For 24–25 we return to OMB# 1850–0969.

Dated: November 30, 2023.

**Stephanie Valentine,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–26679 Filed 12–4–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0204]**

### Agency Information Collection Activities; Comment Request; Work Colleges Application and Agreement

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before February 5, 2024.

**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–0204. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

**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:* Work Colleges Application and Agreement.

*OMB Control Number:* 1845–0153.

*Type of Review:* Extension without change of a currently approved ICR.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 10.

*Total Estimated Number of Annual Burden Hours:* 20.

*Abstract:* The Higher Education Opportunity Act, Public Law 110–315, established the allocation of Federal Work Study funds to recognize, encourage, and promote the use of comprehensive work-learning service programs as part of a financial plan which decreases reliance on grants and loans. The Work Colleges Program is one of the three Federal Work-Study Programs. The other two Federal Work-Study Programs are the Federal Work-Study (FWS) Program and the Job Location and Development (JLD) Program. This is request for an extension without change of the current information collection. The participants are required to apply initially and once approved and participating, must reapply annually. The data collected is used by the Department to certify the Work Colleges agreement and collect the request for funding amount and the anticipated number of students for the year. The data is used in conjunction with institutional program reviews to assess the administrative capability and compliance of the applicant. There are no other resources for collecting this data.

Dated: November 29, 2023.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–26599 Filed 12–4–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0174]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Engage Every Student Recognition Program

**AGENCY:** Office of Finance and Operations (OFO), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before January 4, 2024.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by

selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Shital Shah, 202–377–4990.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Engage Every Student Recognition Program.

*OMB Control Number:* 1894–NEW.

*Type of Review:* A new ICR.

*Respondents/Affected Public:* Individuals and Households.

*Total Estimated Number of Annual Responses:* 570.

*Total Estimated Number of Annual Burden Hours:* 855.

*Abstract:* The American Rescue Plan (ARP) provides funding for implementing comprehensive, evidence-based programs to ensure resources respond to students' academic, social, and emotional needs and address the disproportionate impact of COVID–19 on student populations. Using resources provided by the ARP, States, districts, and their partners can use out-of-school time (OST) to address the disproportionate impact of COVID–19 on students, families, and their communities. Out-of-school time programs, which occur before or after the regular school day or outside of the regular school year, can include a wide range of activities, including comprehensive afterschool or summer-learning and enrichment programs, vacation academies, work-based learning programs, youth development programs, and experiential or service-learning programs.

On July 14th, 2022, the U.S. Department of Education, along with the Afterschool Alliance, AASA—the School Superintendents Association, the National Comprehensive Center at Westat, the National League of Cities and the National Summer Learning Association, launched the Engage Every Student Initiative designed to ensure that every student who wants a spot in a high-quality out-of-school time program has one. In the Fall of 2023, the U.S. Department of Education and the five partnering organizations designed the Engage Every Student Recognition Program, which aims to recognize (1) non-profit organizations working in collaboration with school district/local education agencies (LEAs) or (2) municipalities or local government entities working in collaboration with school district/local education agencies (LEAs) that engage K–12 students in high-quality afterschool or summer learning programming, with high-quality being defined as meeting students' social, emotional, mental, and physical health, and academic needs and addressing the impact of COVID–19 on students' opportunity to learn.

Dated: November 30, 2023.

**Stephanie Valentine,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–26677 Filed 12–4–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0171]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Generic Application Package for Departmental Generic Grant Programs

**AGENCY:** Office of Finance and Operations (OFO), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before January 4, 2024.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Cleveland Knight, 202–987–0064.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Generic Application Package for Departmental Generic Grant Programs.

*OMB Control Number:* 1894–0006.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 9,861.

*Total Estimated Number of Annual Burden Hours:* 447,089.

*Abstract:* The Department is requesting an extension of the approval for the Generic Application Package that numerous ED discretionary grant programs use to provide to applicants the forms and information needed to apply for new grants under those grant program competitions. The Department will use this Generic Application package for discretionary grant programs that: (1) Use the standard ED or Federal-wide grant applications forms that have been cleared separately through OMB under the terms of this

generic clearance as approved by OMB and (2) use selection criteria from the Education Department General Administrative Regulations (EDGAR); selection criteria that reflect statutory or regulatory provisions that have been developed under 34 CFR 75.209, or a combination of EDGAR, statutory or regulatory criteria or other provisions, as authorized under 34 CFR 75.200 and 75.209. The use of the standard ED grant application forms and the use of EDGAR and/or criteria developed under §§ 75.200 and 75.209 promotes the standardization and streamlining of ED discretionary grant application packages.

Dated: November 30, 2023.

**Stephanie Valentine,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–26680 Filed 12–4–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2023–SCC–0179]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

**AGENCY:** Office of Civil Rights (OCR), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before January 4, 2024.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Alejandro Reyes, 202–219–2035.

**SUPPLEMENTARY INFORMATION:** The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

*OMB Control Number:* 1870–0505.

*Type of Review:* An extension without change of a currently approved ICR.

*Respondents/Affected Public:* Private sector; State, local, and Tribal governments.

*Total Estimated Number of Annual Responses:* 119,860.

*Total Estimated Number of Annual Burden Hours:* 1,892,188.

*Abstract:* This is an extension of an existing collection under OMB Control No. 1870–0505. This collection was originally submitted by the U.S. Department of Education (the Department) in December 2018 in connection with a Notice of Proposed Rulemaking for the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance to propose amendments to the Department's implementing regulations for title IX of the Education Amendments of 1972. (ICR Reference No. 201811–1870–001). The Department finalized its rulemaking in May 2020 and the ICR was approved by OMB on December 8, 2020 (ICR Reference No. 202005–1870–001). The ICR is scheduled to expire on December 31, 2023. The regulations that require the collection of information are set forth below.

Section 106.45(b)(2) Notice of Allegations requires all recipients, upon receipt of a formal complaint, to provide written notice to the complainant and the respondent, informing the parties of the recipient's grievance process and providing sufficient details of the sexual harassment allegations being investigated. This written notice will help ensure that the nature and scope of the investigation, and the recipient's procedures, are clearly understood by the parties at the commencement of an investigation.

Section 106.45(b)(9) Informal resolution requires that recipients who wish to provide parties with the option of informal resolution of formal complaints, may offer this option to the parties but may only proceed by: first, providing the parties with written notice disclosing the sexual harassment allegations, the requirements of an informal resolution process, any consequences from participating in the informal resolution process; and second, obtaining the parties' voluntary, written consent to the informal resolution process. This provision permits—but does not require—recipients to allow for voluntary participation in an informal resolution as a method of resolving the allegations raised in formal complaints without completing the investigation and adjudication. Additionally, recipients may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Section 106.45(b)(10) requires recipients to maintain certain documentation regarding their title IX activities. Recipients would be required to maintain for a period of seven years records of: sexual harassment investigations, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under § 106.45(b)(6)(i), any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity; any appeal and the result therefrom; any informal resolution; and all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Additionally, for each response required under § 106.44(a), a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

Dated: November 30, 2023.

**Stephanie Valentine,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023–26638 Filed 12–4–23; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG24–42–000.
*Applicants:* Cutlass Solar II, LLC.
*Description:* Cutlass Solar II, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
*Filed Date:* 11/28/23.
*Accession Number:* 20231128–5143.
*Comment Date:* 5 p.m. ET 12/19/23.

*Docket Numbers:* EG24–43–000.
*Applicants:* Grimes County Solar Project LLC.
*Description:* Grimes County Solar Project LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
*Filed Date:* 11/28/23.
*Accession Number:* 20231128–5146.
*Comment Date:* 5 p.m. ET 12/19/23.

*Docket Numbers:* EG24–44–000.
*Applicants:* Ben Milam Solar 2 LLC.
*Description:* Ben Milam Solar 2 LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
*Filed Date:* 11/29/23.
*Accession Number:* 20231129–5052.
*Comment Date:* 5 p.m. ET 12/20/23.

*Docket Numbers:* EG24–45–000.
*Applicants:* Quartz Solar, LLC.
*Description:* Quartz Solar, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
*Filed Date:* 11/29/23.
*Accession Number:* 20231129–5147.
*Comment Date:* 5 p.m. ET 12/20/23

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2721–009; ER10–2721–011; ER10–2721–015.
*Applicants:* El Paso Electric Company.
*Description:* Amendment to July 31, 2023, Notice of Non-Material Change in Status of El Paso Electric Company.
*Filed Date:* 11/20/23.
*Accession Number:* 20231120–5235.
*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* ER10–2861–007; ER13–1504–008.
*Applicants:* SWG Arapahoe, LLC, Fountain Valley Power, L.L.C.
*Description:* Supplement to December 20, 2019, Updated Market Power Analysis for the Northwest Region of Fountain Valley Power, L.L.C., et al.
*Filed Date:* 11/20/23.
*Accession Number:* 20231120–5239.
*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* ER15–1471–011; ER15–632–011; ER16–915–004; ER15–634–011; ER10–2721–010; ER15–1672–010; ER10–2861–009; ER19–2287–002; ER16–2010–005; ER14–2939–009; ER10–1874–012; ER19–9–006; ER15–2728–011; ER19–2294–002; ER14–2140–011; ER12–1308–012; ER15–1952–009; ER16–711–008; ER14–2466–012; ER14–2465–012; ER14–2141–011; ER16–2561–005; ER13–1504–010; ER19–2305–002.
*Applicants:* Valencia Power, LLC, SWG Arapahoe, LLC, Sunflower Wind Project, LLC, Selmer Farm, LLC, RE Columbia Two LLC, RE Camelot LLC, Pio Pico Energy Center, LLC, Pavant Solar LLC, Palouse Wind, LLC, Mulberry Farm, LLC, Mesquite Power, LLC, Maricopa West Solar PV, LLC, Mankato Energy Center II, LLC, Mankato Energy Center, LLC, Imperial Valley Solar Company (IVSC) 2, LLC, Hancock Wind, LLC, Goal Line L.P., Fountain Valley Power, L.L.C., Evergreen Wind Power II, LLC, El Paso Electric Company, Cottonwood Solar, LLC, Comanche Solar PV, LLC, CID Solar, LLC, Blue Sky West, LLC
*Description:* Supplement to January 19, 2021, Notice of Non-Material Change in Status of Blue Sky West, LLC, et al.
*Filed Date:* 11/20/23.
*Accession Number:* 20231120–5236.
*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* ER23–2510–001.
*Applicants:* California Independent System Operator Corporation.
*Description:* Compliance filing: 2023–11–29 Short-Term Wheeling Through Compliance Filing to be effective 6/1/2024.
*Filed Date:* 11/29/23.
*Accession Number:* 20231129–5080.
*Comment Date:* 5 p.m. ET 12/20/23.

*Docket Numbers:* ER24–55–000.
*Applicants:* Silver Peak Energy, LLC.
*Description:* Silver Peak Energy, LLC submits Request for Shortened Comment Period of Ten Days re Supplement to Application.
*Filed Date:* 11/14/23.
*Accession Number:* 20231114–5141.
*Comment Date:* 5 p.m. ET 12/5/23.

*Docket Numbers:* ER24–171–000.
*Applicants:* Skysol, LLC.
*Description:* Supplement to October 20, 2023, Skysol, LLC tariff filing.
*Filed Date:* 11/29/23.
*Accession Number:* 20231129–5150.
*Comment Date:* 5 p.m. ET 12/13/23.

*Docket Numbers:* ER24–492–000.
*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.
*Description:* Compliance filing: ISO New England Inc. submits tariff filing per 35: ISO/NEPOOL; EL23–89—Comp Filing (Rev. to IEP Making Pumped Storage Eligible) to be effective 8/2/2023.
*Filed Date:* 11/29/23.
*Accession Number:* 20231129–5062.
*Comment Date:* 5 p.m. ET 12/20/23.

*Docket Numbers:* ER24–493–000.
*Applicants:* AEP Texas Inc.
*Description:* 205(d) Rate Filing: AEPTX-Sun Cactus Solar Project Generation Interconnection Agreement to be effective 11/6/2023.
*Filed Date:* 11/29/23.
*Accession Number:* 20231129–5067.
*Comment Date:* 5 p.m. ET 12/20/23.

*Docket Numbers:* ER24–494–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* Petition for Approval of Disposition of Penalty Assessment Proceeds of the California Independent System Operator Corporation.
*Filed Date:* 11/29/23.
*Accession Number:* 20231129–5152.
*Comment Date:* 5 p.m. ET 12/20/23.

*Docket Numbers:* ER24–495–000
*Applicants:* Duke Energy Florida, LLC
*Description:* 205(d) Rate Filing: DEF-Harmony Florida Solar II—ASAO SA No. 401 to be effective 10/30/2023.
*Filed Date:* 11/29/23.
*Accession Number:* 20231129–5173.
*Comment Date:* 5 p.m. ET 12/20/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in

Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 29, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–26648 Filed 12–4–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR24–13–000.

*Applicants:* Dow Pipeline Company.

*Description:* 284.123(g) Rate Filing: Notice of Name Change and Revised Statement to be effective 11/1/2023.

*Filed Date:* 11/28/23.

*Accession Number:* 20231128–5094.

*Comment Date:* 5 p.m. ET 12/19/23.

*284.123(g) Protest:* 5 p.m. ET 1/29/24.

*Docket Numbers:* PR24–14–000.

*Applicants:* Dow Intrastate Gas Company.

*Description:* 284.123(g) Rate Filing: Notice of Name Change and Revised Statement to be effective 11/1/2023.

*Filed Date:* 11/28/23.

*Accession Number:* 20231128–5106.

*Comment Date:* 5 p.m. ET 12/19/23.

*284.123(g) Protest:* 5 p.m. ET 1/29/24.

*Docket Numbers:* RP24–172–000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* 4(d) Rate Filing: Negotiated Rate Agreements Update (Pioneer Dec 2023) to be effective 12/1/2023.

*Filed Date:* 11/28/23.

*Accession Number:* 20231128–5072.

*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* RP24–173–000.

*Applicants:* Young Gas Storage Company, Ltd.

*Description:* 4(d) Rate Filing: Annual Fuel Filing 2023 to be effective 1/1/2024.

*Filed Date:* 11/28/23.

*Accession Number:* 20231128–5117.

*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* RP24–174–000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* 4(d) Rate Filing: Article 11.2(a) Inflation Adjustment Filing 2024 to be effective 1/1/2024.

*Filed Date:* 11/28/23.

*Accession Number:* 20231128–5152.

*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* RP24–175–000.

*Applicants:* Portland Natural Gas Transmission System.

*Description:* 4(d) Rate Filing: NR Agmts—Emera 284283–1 and NEGG 285560 to be effective 11/29/2023.

*Filed Date:* 11/28/23.

*Accession Number:* 20231128–5157.

*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* RP24–176–000.

*Applicants:* Tennessee Gas Pipeline Company, L.L.C.

*Description:* Compliance filing: Cashout Report 2022–2023 to be effective N/A.

*Filed Date:* 11/29/23.

*Accession Number:* 20231129–5017.

*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* RP24–177–000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* 4(d) Rate Filing: Negotiated Rate Agreement Update (Conoco Dec 2023) to be effective 12/1/2023.

*Filed Date:* 11/29/23.

*Accession Number:* 20231129–5059.

*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* RP24–178–000.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* 4(d) Rate Filing: Negotiated Rate Agreement Update (SoCal Dec 23) to be effective 12/1/2023.

*Filed Date:* 11/29/23.

*Accession Number:* 20231129–5064.

*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* RP24–179–000.

*Applicants:* Stagecoach Pipeline & Storage Company LLC.

*Description:* 4(d) Rate Filing: Negotiated Rate Agreements Filing—EQT Energy (388082_388083) to be effective 12/1/2023.

*Filed Date:* 11/29/23.

*Accession Number:* 20231129–5066.

*Comment Date:* 5 p.m. ET 12/11/23.

*Docket Numbers:* RP24–180–000.

*Applicants:* Southern Natural Gas Company, L.L.C.

*Description:* Compliance filing: Annual Report on Operational Transactions 2023 to be effective N/A.

*Filed Date:* 11/29/23.

*Accession Number:* 20231129–5089.

*Comment Date:* 5 p.m. ET 12/11/23.

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.

**Filings in Existing Proceedings**

*Docket Numbers:* RP19–73–009.

*Applicants:* El Paso Natural Gas Company, L.L.C.

*Description:* Compliance filing: Motion to Place 2024 Settlement Rates Into Effect to be effective 1/1/2024.

*Filed Date:* 11/28/23.

*Accession Number:* 20231128–5074.

*Comment Date:* 5 p.m. ET 12/11/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

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: November 29, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–26643 Filed 12–4–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 3777–019]**

### Town of Rollinsford, New Hampshire; 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 License Amendment.

b. *Project No:* 3777–019.

c. *Date Filed:* June 14, 2023.

d. *Applicant:* Town of Rollinsford, New Hampshire.

e. *Name of Project:* Rollinsford Hydroelectric Project.

f. *Location:* The project is located on the Salmon Falls River, near the cities of South Berwick and Rollinsford, in York and Strafford counties, Maine and New Hampshire. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Jason Lisai, Green Mountain Power Corporation, 163 Acorn Lane, Colchester, Vermont 05446, (802) 730–2468, *Jason.lisai@greenmountainpower.com.*

i. *FERC Contact:* Margaret Noonan, (202) 502–8971, *Margaret.Noonan@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* 30 days from the date of notice issuance.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–3777–019. 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:* The applicant requests approval to replace the two v turbine runners with two new turbine runners. The new runners would be placed in the same location as the existing turbine runners. The installation of the new units would result in the authorized installed capacity of the project decreasing from 1,500 kilowatts (kW) to 1,396 kW and the maximum hydraulic capacity increasing from 456 cubic feet per second (cfs) to 512 cfs. The applicant states the increased efficiency of the turbine-generator units would result in an increase in annual energy generation. The applicant does not plan any other structural modifications to the powerhouse or any other project structures. In addition, the applicant states all construction activities associated with the proposed amendment would occur within the existing powerhouse and would be isolated from the river. The applicant does not propose any changes to the licensed project operations during or after turbine runner replacement.

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 fillings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 29, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–26646 Filed 12–4–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL24–24–000]**

### CPV Maple Hill Solar, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On November 28, 2023, the Commission issued an order in Docket No. EL24–24–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether CPV Maple Hill Solar, LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *CPV Maple Hill Solar, LLC,* 185 FERC ¶ 61,150 (2023).

The refund effective date in Docket No. EL24–24–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL24–24–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2022), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 29, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–26644 Filed 12–4–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 5089–027]**

### Fall River Rural Electric Cooperative, Inc.; 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:* New Major License.

b. *Project No.:* 5089–027.

c. *Date Filed:* August 31, 2021.

d. *Applicant:* Fall River Rural Electric Cooperative, Inc. (Fall River).

e. *Name of Project:* Felt Hydroelectric Project (project).

f. *Location:* On the Teton River, near the town of Tetonia, in Teton County, Idaho. The project occupies 114.4 acres of Federal land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Nicholas Josten, 2742 Saint Charles Ave., Idaho Falls, Idaho 83404; (208) 528–6152.

i. *FERC Contact:* John Matkowski at (202) 502–8576, or *john.matkowski@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 motions to intervene and protests using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* 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. All filings must clearly identify the project name and docket number on the first page: Felt Hydroelectric Project (P–5089–027).

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 intervener 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 for filing, but is not ready for environmental analysis at this time.

l. *The existing Felt Project consists of:* (1) a 122.5-foot-long, 12-foot-high concrete dam that includes the following sections: (a) 25-foot-wide sluiceway section with a 4-foot-wide fish ladder and a 14-foot-wide corrugated steel radial gate and (b) a 96-foot-wide uncontrolled overflow spillway with a crest elevation of 5,530-feet mean sea level (msl); (2) a 7-acre impoundment with a storage capacity of 28 acre-feet at a normal water surface elevation of 5,530-feet msl; (3) a 178-foot-long, 8.5-foot-deep fish screen structure equipped with a bar rack with ⅜-inch clear bar spacing and diamond mesh screen; (4) three intake openings located behind the fish screen each equipped with 10-foot-wide intake gates and 10-foot-wide trash racks with 3-inch clear bar spacing; (5) three, 8-foot-square unlined rock tunnels connecting the intakes to penstocks and consisting of: (a) a 179-foot-long Tunnel No. 1 connecting to a 280-foot-long, 78-inch-diameter steel penstock that bifurcates into two, 180-foot-long, 60-inch-diameter steel penstocks that connect to Powerhouse No. 1; and (b) a 177-foot-long Tunnel No. 2 and a 196-foot-long Tunnel No. 3 each connecting to a 1,750-foot-long, 96-inch-diameter steel

penstock that connects to Powerhouse No. 2; (6) an 83-foot-long, 26-foot-wide, 13-foot-high reinforced concrete Powerhouse No. 1 containing two horizontal Francis turbine-generator units with a combined generating capacity of 1,950 kilowatts (kW); (7) a 36-foot-long, 36-foot-wide, 25-foot-high reinforced concrete Powerhouse No. 2 containing two vertical Francis turbine-generator units with a combined generating capacity of 5,500 kW; (8) two tailrace channels discharging to the Teton River from Powerhouses No. 1 and No. 2; (9) a 1,500-foot-long, 4.16 kilovolt (kV) overhead transmission line connecting Powerhouse No. 1 to a transformer located next to Powerhouse No. 2; (10) a 2,000-foot-long, 24.9 kV overhead transmission line leading from the transformer to the interconnection point; and (11) appurtenant facilities.

The project operates in run-of-river mode and generates an average of 33,100 megawatt-hours per year. A continuous minimum flow is released below the dam according to the following schedule: 20 cubic feet per second (cfs) from July 1 to March 14 and 50 cfs from March 15 to June 30.

Fall River proposes to remove 42 acres of land from the current project boundary.

m. A copy of the application is available for review via the internet through the Commission's Home Page (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

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.*

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.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

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—January 2024
Comments on Scoping Document 1 Due—February 2024
Issue Scoping Document 2 (if necessary)—March 2024
Issue Notice of Ready for Environmental Analysis—April 2024

Dated: November 29, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–26645 Filed 12–4–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14861–002]**

### FFP Project 101, LLC; Notice of Tribal Consultation Meeting

a. *Project Name and Number:* Goldendale Energy Storage Project No. 14861–002.

b. *Applicant:* FFP Project 101, LLC.

c. *Date and Time of Meeting:* Wednesday, December 13, 2023 at 10:00 a.m. Pacific Standard Time.

d. *Meeting Location:* Nixyáawii Governance Center (conference room L101A), 46411 Timine Way, Pendleton, Oregon.

e. *FERC Contact:* Michael Tust, (202) 502–6522, *michael.tust@ferc.gov.*

f. *Purpose of Meeting:* Commission staff will hold a meeting with representatives from the Confederated Tribes of the Umatilla Indian Reservation (Umatilla Tribes) to discuss the Umatilla Tribes' concerns regarding the proposed Goldendale Energy Storage Project.

g. Intervenors in the referenced proceeding may attend the meeting; however, participation will be limited to representatives of the Umatilla Tribes and Commission staff. If Umatilla Tribal representatives decide to disclose information about a specific location which could create a risk or harm to an archaeological site or Native American cultural resource, attendees other than Tribal representatives and Commission staff will be excused for that portion of the meeting and can return to the meeting after such information is disclosed. A summary of the meeting will be placed in the public record of this proceeding. As appropriate, the meeting summary will include both a public, redacted version that excludes any information about the specific location of the archeological site or Native American cultural resource and an unredacted privileged version. Intervenors planning to attend the meeting should notify Michael Tust at (202) 502–6522 or *michael.tust@ferc.gov* by Friday, December 8, 2023.

Dated: November 29, 2023.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2023–26647 Filed 12–4–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Southwestern Power Administration

### Sam Rayburn Dam Power Rate

**AGENCY:** Southwestern Power Administration, DOE.

**ACTION:** Notice of proposed rate.

**SUMMARY:** Southwestern Power Administration (Southwestern) proposes to revise the existing Sam Rayburn Dam Rate Schedule to increase annual revenues by approximately 21.10% from $4,563,792 to $5,526,588 effective May 1, 2024, through September 30, 2028. Interested persons may review the proposed rate and supporting studies on Southwestern's website, request to participate in a

public forum, and submit comments. Southwestern will evaluate all comments received in this process.

**DATES:** A consultation and comment period will begin December 5, 2023 and end March 4, 2024. Written comments are due on or before March 4, 2024. If requested, a public information and comment forum (Forum) will be held on January 17, 2024, at 2:00 p.m. to no later than 4:00 p.m. Central Standard Time (CST). The Forum will be conducted via Microsoft Teams. Persons desiring to attend the Forum should notify Southwestern by January 10, 2024, at 11:59 p.m. CST, so that a list of Forum participants can be prepared. Persons desiring to speak at the Forum should specify this in their notification to Southwestern; others may speak if time permits. If Southwestern does not receive a request for a Forum, the Forum will not be held.

**ADDRESSES:** Written comments should be submitted to: Fritha Ohlson, Senior Vice President, Chief Operating Officer, Office of Corporate Operations, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103 or emailed to *swparates@swpa.gov.* The Forum for the increase in annual revenue for Sam Rayburn Dam will be by Microsoft Teams. Please register your intent to attend, including name, address, phone number, and email address, with Southwestern's Division of Resources and Rates, *swparates@swpa.gov,* to receive updates on the meeting status of the Forum.

**FOR FURTHER INFORMATION CONTACT:** Ashley Corker, Director, Division of Resources and Rates, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6682, *ashley.corker@swpa.gov.*

**SUPPLEMENTARY INFORMATION:** On December 17, 2015, in Rate Order No. SWPA–69, the Deputy Secretary of Energy placed into effect the current Sam Rayburn Dam rate schedule (SRD–15) on an interim basis for the period January 1, 2016 to September 30, 2019. FERC confirmed and approved SRD–15 on a final basis on June 30, 2016 for a period ending September 30, 2019. On September 22, 2019, in Rate Order No. SWPA–75, the Assistant Secretary for Electricity extended SRD–15 for two years, for the period of October 1, 2019 through September 30, 2021. On August 30, 2021, in Rate Order No. SWPA–78, the Administrator, Southwestern, extended SRD–15 for two years, for the period of October 1, 2021 through September 30, 2023. On September 20, 2023, the Administrator, Southwestern, extended SRD–15 on a temporary basis through September 30, 2024, unless superseded.

Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2 entitled Power Marketing Administration Financial Reporting. Following these guidelines, Southwestern prepared a 2023 Current Power Repayment Study using the existing Sam Rayburn Dam Rate Schedule. This study indicates that Southwestern's legal requirement to repay the investment in the power generating facility for power and energy marketed by Southwestern will not be met without an increase in revenues. The need for increased revenues is primarily due to increased operations and maintenance costs and increased cost associated with investments and replacements in the Corps hydroelectric generating facility. Southwestern prepared a 2023 Revised Power Repayment Study to address the revenue shortfall and inform development of the proposed rate schedule. The 2023 Revised Power Repayment Study indicates that the proposed Rate Schedule will increase annual revenues approximately 21.10% from $4,563,792 to $5,526,588 and be effective from May 1, 2024, through September 30, 2028.

Southwestern will continue to perform its Power Repayment Studies annually, and if the results of any future Power Repayment Studies indicate the need for a change in revenues, Southwestern will proceed with appropriate action at that time.

## Public Participation

Procedures for public participation in power and transmission rate adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903). The proposed action is a major rate adjustment, as defined by 10 CFR 903.2(d). In accordance with 10 CFR 903.14, the public consultation and comment period is 90 days. In accordance with 10 CFR 903.15(a) and 903.16(a), Southwestern will hold a Forum for this proposed rate adjustment if requested. Southwestern will review and consider all timely public comments at the conclusion of the consultation and comment period and adjust the proposal as appropriate. The Sam Rayburn Dam Rate Schedule will then be approved on an interim basis.

## 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 Southwestern's 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–SWPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Administrator, Southwestern.

## Availability of Information

The 2023 Sam Rayburn Dam Power Repayment Studies and the proposed Sam Rayburn Dam Rate Schedule are available on Southwestern's website at: *https://www.energy.gov/swpa/rate-schedule-actions.* At the conclusion of the consultation and comment period, Southwestern will post all comments received at the same website location. If a Forum is held, the transcript of the Forum and any other documents introduced during the Forum will also be made available on Southwestern's website.

## Environmental Impact

Southwestern 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.[1]

## Determination Under Executive Order 12866

Southwestern 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 November 28, 2023, by Mike Wech, Administrator for Southwestern Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is

[1] 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).

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 DOE. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 30, 2023.

**Treena V. Garrett,**

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

[FR Doc. 2023–26629 Filed 12–4–23; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2003–0004; FRL–11580–01–OCSPP]**

### Access to Confidential Business Information by Chemical Abstracts Service (CAS)

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

**ACTION:** Notice.

**SUMMARY:** EPA has authorized its contractor Chemical Abstracts Service (CAS) (a Division of the American Chemical Society) of Columbus, OH to access information which has been submitted to EPA under all Sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

**DATES:** Access to the confidential data will occur no sooner than December 12, 2023.

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Colby Lintner or Adam Schwoerer, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8182; email address: *lintner.colby@epa.gov* or (202) 564–4767; *schwoerer.adam@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Because other entities may also 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–OPPT–2003–0004, is available at *https://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. 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 OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

**II. What action is the Agency taking?**

Under contract number 68HERC24C0037, contractor CAS located at 2540 Olentangy River RD, P.O. Box 3012, Columbus, OH 43210–0012 will provide technical support in the area of chemical identification, chemical characterization, and chemical nomenclature for new chemical review and for the updating and maintenance of the Inventory. In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68HERC24C0037, CAS will require access to CBI submitted under all Sections of TSCA to perform successfully the duties specified under the contract. CAS personnel will be given access to information claimed or determined to be CBI information submitted to EPA under all sections of TSCA.

EPA is issuing this notice to inform all submitters of information under all Sections of TSCA that EPA will provide CAS access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and CAS, site located at 2540 Olentangy River Rd., Columbus, Ohio in accordance with EPA's *TSCA CBI Protection Manual* and the Rules of Behavior for Virtual Desktop Access to OPPT Materials, including TSCA CBI.

Access to TSCA data, including CBI, will continue until October 31, 2028. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CAS' personnel will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

*Authority:* 15 U.S.C. 2601 *et seq.*

Dated: November 29, 2023.

**Pamela Myrick,**

*Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2023–26575 Filed 12–4–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2023–0098; FRL–10582–07–OCSPP]**

### Certain New Chemicals or Significant New Uses; Statements of Findings for October 2023

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

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of certain TSCA submissions when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA. This document presents statements of findings made by EPA on such submissions during the period from October 1, 2023, to October 31, 2023.

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0098, is available online at *https://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. 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 OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Rebecca Edelstein, New Chemical Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1667 email address: *edelstein.rebecca@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

*A. Does this action apply to me?*

This action provides information that is directed to the public in general.

*B. What action is the Agency taking?*

This document lists the statements of findings made by EPA after review of submissions under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the reporting period.

*C. What is the Agency's authority for taking this action?*

TSCA section 5(a)(3) requires EPA to review a submission under TSCA section 5(a) and make one of several specific findings pertaining to whether the substance may present unreasonable risk of injury to health or the environment. Among those potential findings is that the chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment per TSCA Section 5(a)(3)(C).

TSCA section 5(g) requires EPA to publish in the **Federal Register** a statement of its findings after its review of a submission under TSCA section 5(a) when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

*D. Does this action have any incremental economic impacts or paperwork burdens?*

No.

## II. Statements of Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

The following list provides the EPA case number assigned to the TSCA section 5(a) submission and the chemical identity (generic name if the specific name is claimed as CBI).

- P–23–0012, Starch, polymer with alkenoic acid, salt (Generic Name).
- P–23–0031, Glycerin, polyalkoxylated, mixed fatty acid and alkyl diacid esters (Generic Name).

To access EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C), look up the specific case number at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/chemicals-determined-not-likely.*

*Authority:* 15 U.S.C. 2601 *et seq.*

Dated: November 29, 2023.

**Shari Z. Barash,**

*Acting Director, New Chemicals Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2023–26663 Filed 12–4–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–R08–OPPT–2020–0013; FRL–11574–01–R8]**

## Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Environmental Protection Agency (EPA) Pollution Prevention (P2) Awards Program

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR) entitled ''Environmental Protection Agency (EPA) Pollution Prevention (P2) Awards Program'' (EPA ICR Number: 2614.02, OMB Control Number: 2008–0004) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through August 31, 2024.

**DATES:** Comments must be submitted on or before February 5, 2024.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–R08–OPPT–2020–0013, online using *https://www.regulations.gov* (our preferred method), or by email to *payan.melissa@epa.gov.* EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Melissa Payan, EPA R8 Land, Chemical and Redevelopment Division, Pollution Prevention Program, (8LCR–CES), Environmental Protection Agency R8, 1595 Wynkoop St., Denver, CO 80202 telephone number: 303–312–6511; email address: *payan.melissa@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through August 31, 2024. 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.

This document allows 60 days for public comments. Supporting documents, which explain in detail the

information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paper Reduction Act (PRA), EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** document to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* EPA's Pollution Prevention (P2) Program is a voluntary program that encourages businesses/facilities to adopt P2 projects that reduces both financial costs (waste management and cleanup) and environmental costs (health problems and environmental damage). In passing the Pollution Prevention Act (PPA) in 1990, Congress found that ''(T)here are significant opportunities for industry to reduce or prevent pollution at the source through cost-effective changes in production, operation, and raw materials use. Such changes offer industry substantial savings in reduced raw material, pollution control, and liability costs as well as help protect the environment and reduce risks to worker health and safety.'' 42 U.S.C. 13101(a)(2). Furthermore, the PPA states the Administrator shall ''establish an annual award program to recognize a company or companies which operate outstanding or innovative source reduction programs'' (PPA section 6604) 42 U.S.C. 13103(b)(13). The EPA P2 Awards Program is an annual, voluntary, and non-monetary awards program that will recognize companies that demonstrate leadership in innovative P2 practices and encourage other entities to consider P2 approaches. This ICR may be applicable to HQ, as well as any of the 10 Regional Offices that choose to participate and implement a P2 Awards Program.

*Form numbers:* EPA P2 Award Program Application—5800–005.

*Respondents/affected entities:* Intended Respondents include various types of businesses, companies, organizations, both for-profit and non-profit, from all North American Industry Classification System (NAICS) codes. However, businesses need to be from a state in an EPA Region implementing this awards program.

*Respondent's obligation to respond:* Respondents are not obligated to respond. This is done on a voluntary basis.

*Estimated number of respondents:* Approximately 7 per region (total).

*Frequency of response:* Annually on a voluntary basis.

*Total estimated burden:* Average of 10 hours per respondent (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* $776.95 per respondent (per year), includes $0 annualized capital or operation and maintenance costs.

*Changes in the estimates:* There is a decrease of 9.5 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to adjustments to the estimates and receiving input from respondents over the past three years. The original consultations were with state recognition programs, which are more rigorous than the regional P2 award program. Regions who are currently implementing Regional P2 Programs, consulted with applicants who provided an average estimate of 10.9 hours to respond to questions in the application. Based off these consultations we are decreasing the respondent burden by 9.5 hours.

**Kimberly Pardue Welch,**

*Branch Manager, Chemical, Safety Environmental Stewardship Branch, EPA Region 8.*

[FR Doc. 2023–26623 Filed 12–4–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OLEM–2022–0415; FRL–9825–01–OLEM]**

## Draft National Strategy for Reducing Food Loss and Waste and Recycling Organics: Request for Public Comment

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

**ACTION:** Notice of availability.

**SUMMARY:** The Environmental Protection Agency (EPA), U.S. Department of Agriculture (USDA) and Food and Drug Administration (FDA) have developed the *Draft National Strategy for Reducing Food Loss and Waste and Recycling Organics* (''draft Strategy'') to help prevent the loss and waste of food, where possible, increase recycling of food and other organic materials to support a more circular economy for all, reduce greenhouse gas emissions, save households and businesses money, and build cleaner and healthier communities. Individually and collectively, the EPA, USDA and FDA are working toward reducing food loss and waste through their Federal interagency collaboration. This Notice provides the public with an opportunity to share input on the draft Strategy, which identifies the EPA, USDA and FDA actions and asks where they can work collaboratively with each other and partners to reduce food loss and waste and recycle organics. These Federal agencies are seeking public comment from diverse partners across the food system. The EPA, USDA and FDA will consider the comments received on this draft Strategy, finalize it, and begin implementation of the final Strategy in 2024.

**DATES:** Comments must be received on or before January 4, 2024.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2022–0415, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Land and Emergency Management Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

*Instructions:* All submissions received must include the Docket ID No. for this action. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Hannah Blaufuss, Resource Conservation and Sustainability Division, Office of Resource Conservation and Recovery, Office of Land and Emergency Management (5306T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–5614; email address: *SMMFood@epa.gov.* For more information on this strategy and others developed as part of EPA's Series on Building a Circular Economy for All, please visit *https://www.epa.gov/circulareconomy.*

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation

*A. Written Comments*

Response to this request for public comment is voluntary. Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2022–0415 at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI), Proprietary Business Information (PBI), or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). Please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions; and general guidance on making effective comments.

## II. General Information

*A. What is the purpose of this request for public comment?*

The *Draft National Strategy for Reducing Food Loss and Waste and Recycling Organics* aims to prevent the loss and waste of food, where possible; increase recycling of food and other organic materials to support a more circular economy for all, reduce greenhouse gas emissions, save households and businesses money, and build cleaner, healthier communities. The three Federal agencies have a formal interagency agreement focusing on the cooperation and coordination of efforts to reduce food loss and waste. To achieve the desired results, the EPA, USDA and FDA are seeking input from diverse partners—including local, State, Tribal, and territorial governments; professional and industry associations; individuals, private companies, and those working in food and agricultural industries; academic institutions; and non-governmental and community-based organizations. The actions detailed in this draft Strategy will help the U.S. meet its National Food Loss and Waste Reduction Goal to halve food loss and waste and contribute to the National Recycling Goal to achieve a 50 percent recycling rate by 2030, as well as contribute to global achievement of the United Nations Sustainable Development Goal Target 12.3. Preventing food loss and waste and recycling food and other organic waste will also reduce landfill methane emissions, in support of the U.S. Methane Emissions Reduction Action Plan, which identified food waste prevention and organic waste diversion as the top two methane emissions reduction strategies for municipal solid waste.

The draft Strategy identifies concrete steps, and complementary EPA, USDA, and FDA actions, that will help accelerate the prevention of food loss and waste, where possible, and recycling of the remainder with other organic waste, across the entire supply chain.

The EPA, USDA and FDA are seeking input from individuals and partners on what additional EPA, USDA and FDA actions should be included or modified in the Strategy and how best to collaborate on those efforts with each other and partners across the food system. Specific actions ultimately adopted will be informed by evidence-based research to the extent available and partner engagement, implemented through technical and financial assistance, pilots and programs, and policies, where appropriate and be within each agencies' legal authorities. The EPA, USDA and FDA will consider the comments received on this draft Strategy, finalize it, and begin implementation of the final Strategy in 2024.

Dated: November 28, 2023.

**Carolyn Hoskinson,**

*Director, Office of Resource Conservation and Recovery.*

[FR Doc. 2023–26574 Filed 12–4–23; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

### Notice of Issuance of Statement of Federal Financial Accounting Standards 62, Transitional Amendment to SFFAS 54

**AGENCY:** Federal Accounting Standards Advisory Board.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Federal Accounting Standards Advisory Board has issued Statement of Federal Financial Accounting Standards (SFFAS) 62 titled *Transitional Amendment to SFFAS 54.*

**ADDRESSES:** SFFAS 62 is available on the FASAB website at *http://www.fasab.gov/accounting-standards/.* 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: November 30, 2023.

**Monica R. Valentine,**

*Executive Director.*

[FR Doc. 2023–26627 Filed 12–4–23; 8:45 am]

**BILLING CODE 1610–02–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1283; FR ID 187764]**

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and 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. Comments are requested concerning: 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

**DATES:** Written PRA comments should be submitted on or before February 5, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

**SUPPLEMENTARY INFORMATION:** The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 Office of Management and Budget (OMB) control number.

*OMB Control Number:* 3060–1283.

*Title:* Improving Outage Reporting for Submarine Cables and Enhanced Submarine Outage Data.

*Form Number:* Not applicable.

*Type of Review:* Extension of a currently information collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 85 respondents; 154 responses.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i)–(j) & (o), 405, and the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and 3 U.S.C. 301, and Executive Order 10530.

*Total Annual Burden:* 308 hours.

*Total Annual Cost:* No Cost.

*Needs and Uses:* Section 151 of the Communications Act of 1934 (Act), as amended, requires the Commission to promote the safety of life and property through the use of wire and radio communications. Additionally, the Cable Landing License Act, (47 U.S.C. 34–39), and Executive Order 10530, provide the Commission with authority to grant, withhold, condition and revoke submarine cable landing licenses. Further, the Cable Landing License Act and Executive Order 10530 provide that the Commission may place conditions on the grant of a submarine cable landing license in order to assure just and reasonable rates and service in the operation and use of cables so licensed. ''Just and reasonable service'' entails assurance that the cable infrastructure will be reasonably available. Availability of submarine cables is also critically important for national security and the economy because submarine cables carry approximately 95 percent of international communications traffic and are the primary means of connectivity for numerous U.S. states and territories.

This collection is part of the Commission's NORS outage reporting regime. As with the other information collection collected in NORS regarding other communications services (under OMB Control No. 3060–0484), this collection facilitates FCC monitoring, analysis, and investigation of the reliability and security of submarine cable networks, and to identify and act on potential threats to our Nation's telecommunications infrastructure. Drawing from a decade of experience in outage reporting, the Commission will seek an ongoing dialogue with submarine cable licensees, as well as with the industry at large, regarding lessons learned from the new information collection. These efforts will help the Commission develop a better understanding of the root causes of significant outages, and to explore preventive measures to mitigate the impact of such outages on the Nation and the American public.

Mandatory submarine cable outage data provides the Commission with greater visibility into the availability and health of these networks, allowing the Commission to better track and analyze submarine cable resiliency. This enhanced visibility into submarine cable network outages will allow the Commission to take appropriate actions to mitigate disruptions, if necessary, and to avoid the development of larger, more significant problems which could impact national security and public safety interests. Submarine cable outages do not typically occur with the same frequency as terrestrial outages, but when they do occur have a greater impact on the Nation's telecommunications due to the volume and nature of communications carried over such cables. Damages to submarine cables are usually caused by weather or inadvertent slicing by underseas equipment. However, submarine cables are also susceptible to intentional damage for nefarious purposes that could lead to a severe degradation of crucial government, as well as non-government, communications.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2023–26696 Filed 12–4–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 187884]**

### Privacy Act of 1974; Matching Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a new matching program.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the New Mexico Human Services Department. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Written comments are due on or before January 4, 2024. This computer matching program will commence on January 4, 2024, and will conclude 18 months after the effective date.

**ADDRESSES:** Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs. In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP and Medicaid benefits administered by the New Mexico Human Services Department.

**Participating Agencies**

New Mexico Human Services Department (source agency); Federal Communications Commission (recipient agency) and Universal Service Administrative Company.

**Authority for Conducting the Matching Program**

The authority to conduct the matching program for the FCC's ACP is 47 U.S.C. 1752(a)–(b). The authority to conduct the matching program for the FCC's Lifeline program is 47 U.S.C. 254(a)–(c), (j).

**Purpose(s)**

The purpose of this new matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP and Medicaid in New Mexico. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

**Categories of Individuals**

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

**Categories of Records**

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and first or last name. The National Verifier will transfer these data elements to the New Mexico Human Services Department which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP and Medicaid administered by the New Mexico Human Services Department.

**System(s) of Records**

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2023–26698 Filed 12–4–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 187883]**

### Privacy Act of 1974; Matching Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a new matching program.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Minnesota Department of Human Services. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of the Affordable Connectivity Program (ACP), which is administered by USAC under the direction of the FCC. More information about this program is provided in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Written comments are due on or before January 4, 2024. This computer matching program will commence on January 4, 2024, and will conclude 18 months after the effective date.

**ADDRESSES:** Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program,

and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of ACP applicants and subscribers by determining whether they receive SNAP and Medicaid benefits administered by the Minnesota Department of Human Services.

**Participating Agencies**

Minnesota Department of Human Services (source agency), Federal Communications Commission (recipient agency) and Universal Service Administrative Company.

**Authority for Conducting the Matching Program**

The authority to conduct the matching program for the FCC's ACP is 47 U.S.C. 1752(a)–(b).

**Purpose(s)**

The purpose of this new matching agreement is to verify the eligibility of applicants and subscribers to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for ACP by checking an applicant's/subscriber's participation in the SNAP and Medicaid Program. Under FCC rules, consumers receiving these benefits qualify for ACP benefits.

**Categories of Individuals**

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for ACP benefits; are currently receiving ACP benefits; or who have received ACP benefits.

**Categories of Records**

The categories of records involved in the matching program include the last four digits of the applicant's Social Security Number, date of birth, and first and last name. The National Verifier will transfer these data elements to the Minnesota Department of Human Services, which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP and Medicaid administered by the Minnesota Department of Human Services.

**System(s) of Records**

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2023–26697 Filed 12–4–23; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FR ID: 187882]**

### Privacy Act of 1974; Matching Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of a new matching program.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Kentucky Cabinet for Health and Family Services, Department for Community Based Services. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** Written comments are due on or before January 4, 2024. This computer matching program will commence on January 4, 2024, and will conclude 18 months after the effective date.

**ADDRESSES:** Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific Federal assistance programs. In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with

other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP and Medicaid benefits administered by the Kentucky Cabinet for Health and Family Services, Department for Community Based Services.

**Participating Agencies**

Kentucky Cabinet for Health and Family Services, Department for Community Based Services (source agency); Federal Communications Commission (recipient agency) and Universal Service Administrative Company.

**Authority for Conducting the Matching Program**

The authority to conduct the matching program for the FCC's ACP is 47 U.S.C. 1752(a)–(b). The authority to conduct the matching program for the FCC's Lifeline program is 47 U.S.C. 254(a)–(c), (j).

**Purpose(s)**

The purpose of this new matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP and Medicaid in Kentucky. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

**Categories of Individuals**

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

**Categories of Records**

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and first and last name. The National Verifier will transfer these data elements to the Kentucky Cabinet for Health and Family Services, Department for Community Based Services which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP and Medicaid administered by the Kentucky Cabinet for Health and Family Services, Department for Community Based Services.

**System(s) of Records**

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2023–26695 Filed 12–4–23; 8:45 am]

**BILLING CODE 6712–01–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 December 20, 2023.

*A. Federal Reserve Bank of Dallas* (Karen Smith, Director, Mergers & Acquisitions) 2200 N Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *Francisco Perales, San Antonio, Texas;* to acquire voting shares of San Diego Bancshares, Inc., and thereby indirectly acquire voting shares of First State Bank of San Diego, both of San Diego, Texas.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2023–26687 Filed 12–4–23; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

**AGENCY:** Board of Governors of the Federal Reserve System.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies and the Annual Report of Merchant Banking Investments Held for an Extended Period (FR Y–12, FR Y–12A; OMB No. 7100–0300).

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

**Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection**

*Collection title:* Consolidated Holding Company Report of Equity Investments in Nonfinancial Companies and the Annual Report of Merchant Banking Investments Held for an Extended Period.

*Collection identifier:* FR Y–12, FR Y–12A.

*OMB control number:* 7100–0300.

*Effective Date:* December 31, 2023.

*General description of collection:* The FR Y–12 report collects information from certain holding companies on their equity investments in nonfinancial companies. The FR Y–12A report collects information from certain financial holding companies (FHCs) on merchant banking investments that they have held for longer than 8 years (or 13 years in the case of investments held through a qualifying private equity fund). The Board uses the FR Y–12 report to monitor the growth in equity investments in nonfinancial companies and their contributions to capital, profitability, risk, and volatility. The Board uses the FR Y–12A report to monitor investments that are approaching the end of their applicable holding periods.

*Frequency:* Quarterly, semiannually, annually.

*Respondents:* Bank holding companies, savings and loan holding companies, U.S. intermediate holding companies, and certain FHCs.

*Total estimated number of respondents:* 31.

*Total estimated change in burden:* 66.

*Total estimated annual burden hours:* 2,021. [1]

*Current actions:* On July 19, 2023, the Board published a notice in the **Federal Register** (88 FR 46161) requesting public comment for 60 days on the extension, with revision, of the FR Y–12 and FR Y–12A. The Board proposed to revise the FR Y–12 and FR Y–12A instructions by clarifying when respondents should submit their reports when the submission deadline falls on a weekend or holiday, modifying and clarifying recordkeeping requirements, clarifying the reported amount of a firm's aggregate nonfinancial equity investment, clarifying which columns are applicable to certain FR Y–12 schedules, and aligning the two reports' submission deadlines. The comment period for this notice expired on September 18, 2023. The Board did not receive any comments. The revisions will be implemented as originally proposed.

Board of Governors of the Federal Reserve System, November 29, 2023.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2023–26583 Filed 12–4–23; 8:45 am]

**BILLING CODE 6210–01–P**

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR Y–12 and FR Y–12A.

## 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 January 4, 2024.

*A. Federal Reserve Bank of Kansas City* (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Firstar Financial Corp., Muskogee, Oklahoma;* to merge with Stigler Bancorporation, Inc., and thereby indirectly acquire The First National Bank of Stigler, both of Stigler, Oklahoma.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2023–26688 Filed 12–4–23; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation WW (FR WW; OMB No. 7100–0367).

**DATES:** Comments must be submitted on or before February 5, 2024.

**ADDRESSES:** You may submit comments, identified by FR WW, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

**SUPPLEMENTARY INFORMATION:** On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

**Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection**

*Collection title:* Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation WW.

*Collection identifier:* FR WW.

*OMB control number:* 7100–0367.

*General description of collection:* The Board, Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) implemented a liquidity coverage ratio (LCR) requirement and a net stable funding ratio (NSFR) requirement, consistent with the international liquidity standards published by the Basel Committee on Banking Supervision (BCBS), for large and internationally active banking organizations. For the Board, these standards are implemented through Regulation WW—Liquidity Risk Measurement, Standards, and Monitoring (12 CFR part 249). The NSFR and LCR requirements in Regulation WW apply to certain large state member banks, covered depository institution holding companies, and U.S. intermediate holding companies of foreign banking organizations, as well as covered nonbank companies (together, covered companies). The reporting, recordkeeping, and disclosure requirements contained in FR WW are used to monitor covered companies' compliance with the LCR and NSFR.

*Proposed revisions:* The Board proposes to revise the FR WW information collection to account for three recordkeeping requirements in Regulation WW, contained in sections 249.4(a), 249.22(a)(1), and (a)(4), which had not been previously cleared by the Board under the PRA. Section 249.4(a) requires covered companies to produce and maintain certain records that document the compliance of their qualifying master netting agreement with the requirements of section 249.3, and that establish and document procedures for ensuring that these agreements remain compliant with the requirement of the regulation. In addition, section 249.22(a)(1) requires covered companies to demonstrate their capacity to monetize high-quality liquid assets (HQLA) by implementing and maintaining procedures and systems to monetize any HQLA in accordance with certain parameters. Moreover, section 249.22(a)(4) requires that the covered company implement and maintain policies and procedures that determine the composition of its eligible HQLA on each calculation date according to certain required steps.

The Board is also utilizing a standard burden calculation methodology for the estimated hours per response, which caused a net reduction in total burden even though there are three additional recordkeeping requirements now being accounted for.

*Frequency:* The reporting requirements of the FR WW information collection are submitted on an event-generated basis. The recordkeeping requirements of the FR WW information collection are both event-generated and ongoing. The disclosure requirements of the FR WW information collection must be met on a quarterly basis (relating to the LCR) as well as every second and fourth calendar quarter (relating to the NSFR) and must remain publicly

available for at least five years after the initial disclosure date.

*Respondents:* The FR WW panel comprises covered companies, as defined above. Certain requirements apply only to covered holding and nonbank companies.

*Total estimated number of respondents:* 21.

*Total estimated change in burden:* (446).

*Total estimated annual burden hours:* 2,483.[1]

Board of Governors of the Federal Reserve System, November 29, 2023.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2023–26584 Filed 12–4–23; 8:45 am]

**BILLING CODE 6210–01–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 clearance from the Office of Management and Budget (''OMB'') for information collection requirements in the Energy Labeling Rule (''Rule''). That clearance expires on February 29, 2024.

**DATES:** Comments must be filed by February 5, 2024.

**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 ''Energy Labeling Rule, PRA Comment, P145403,'' 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, Bureau of Consumer Protection, Federal Trade Commission, *hnewsome@ftc.gov,* (202) 326–2889.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Energy Labeling Rule (Rule), 16 CFR part 305.

*OMB Control Number:* 3084–0069.

*Type of Review:* Extension without change of currently approved collection.

*Affected Public:* Private Sector: Businesses and other for-profit entities.

*Estimated Annual Burden Hours:* 821,651.

*Estimated Annual Labor Costs:* 24,690,012.

*Estimated Annual Non-labor Costs:* $3,000,000.

*Abstract:* The Energy Labeling Rule implements the Energy Policy and Conservation Act of 1975 (''EPCA'').[1] The Rule establishes testing, reporting, recordkeeping, and labeling requirements for manufacturers of major household products (refrigerators, refrigerator-freezers, and freezers; dishwashers; clothes washers; water heaters; room air conditioners; furnaces; central air conditioners; heat pumps; pool heaters; fluorescent lamp ballasts; lamp products; plumbing fittings; plumbing fixtures; ceiling fans; consumer specialty lamps; and televisions). The requirements relate specifically to the disclosure of information relating to energy consumption and water usage. The Rule's testing and disclosure requirements enable consumers purchasing products to compare the efficiency or energy use of competing models. In addition, EPCA and the Rule require manufacturers to submit relevant data to the Commission regarding energy or water usage in connection with the products they manufacture. The Commission uses this data to compile ranges of comparability for covered appliances for publication in the **Federal Register**. These submissions, along with required records for testing data, may also be used in enforcement actions involving alleged misstatements on labels or in advertisements.

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 Estimates**

*Estimated annual hours burden:* 821,651.

The estimated hours burden imposed by Section 324 of EPCA and the Commission's Rule include burdens for testing (693,320 hours); reporting (2,646 hours); recordkeeping (807 hours); labeling (112,272 hours); retail and online catalog disclosures (6,800 hours); and online label posting (5,806 hours). The total burden for these activities is 821,651 hours (rounded to the nearest hour).

The following estimates of the time needed to comply with the requirements of the Rule are based on census data, Department of Energy figures and estimates, general knowledge of manufacturing practices, and industry input and figures. Because the compliance burden falls almost entirely on manufacturers and importers (with a *de minimis* burden for retailers), burden estimates are calculated on the basis of the number of domestic manufacturers and/or the number of units shipped domestically in the various product categories.

*A. Testing*

Under the Rule, manufacturers of covered products must test each basic model they produce to determine energy usage (or, in the case of plumbing fixtures, water consumption). The burden imposed by this requirement is determined by the number of basic models produced, the average number of units tested per model, and the time required to conduct the applicable test.

Manufacturers need not subject each basic model to testing annually; they must retest only if the product design changes in such a way as to affect energy consumption. The staff estimates that the proportion of models tested each year ranges roughly between 10% and 50% and that the actual percentage of basic models tested varies by appliance category. In addition, the majority of tests conducted are required by Department of Energy requirements; therefore, it is likely that only a small portion of the tests conducted is attributable to the Rule's requirements. Accordingly, the burden estimates are based on the assumption that 25% of all basic models are tested annually due to the Rule's requirements. Thus, the estimated testing burden for the various categories of products covered by the Rule is as follows: [2]

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR WW.

[1] 42 U.S.C. 6294.

[2] The following numbers reflect estimates of the basic models in the market and test burdens based on information collected by the Department of Energy or other sources. The actual basic model numbers will vary from year to year.

| Category of manufacturer | Number of basic models | Percentage of models tested (FTC required) | Avg. number of units tested per model | Labor hours per unit tested | Total annual testing burden hours |
|---|---|---|---|---|---|
| Refrigerators, Refrigerator-freezers, and Freezers | 9,703 | 25 | 4 | 4 | 38,812 |
| Dishwashers | 1,350 | 25 | 4 | 1 | 1,350 |
| Clothes washers | 1,364 | 25 | 4 | 2 | 2,728 |
| Water heaters | 3,936 | 25 | 2 | 24 | 47,232 |
| Room air conditioners | 1,844 | 25 | 4 | 8 | 14,752 |
| Furnaces | 5,894 | 25 | 2 | 8 | 23,576 |
| Central A/C and Heat pumps | 11,911 | 25 | 2 | 24 | 142,932 |
| Pool heaters | 280 | 25 | 2 | 12 | 1,680 |
| Fluorescent lamp ballasts | 494 | 25 | 4 | 3 | 1,482 |
| Lamp products | 20,000 | 25 | 10 | 8 | 400,000 |
| Plumbing fittings | 3,000 | 25 | 2 | 2 | 3,000 |
| Plumbing fixtures | 45,111 | 25 | 1 | .0833 | 939 |
| Ceiling fans | 9,572 | 25 | 3 | 1 | 7,179 |
| Televisions | 3,274 | 25 | 2 | 2 | 3,274 |
| Portable air conditioners | 548 | 25 | 4 | 8 | 4,384 |
| | ..... | ..... | ..... | ..... | 693,320 |

*B. Reporting*

The Rule requires that manufacturers of covered products ''shall submit annually a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 429. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the CCMS at *https://regulations.doe.gov/ccms* as provided by 10 CFR 429.12.'' 16 CFR 305.11. The Rule also requires manufacturers to furnish links to images of their EnergyGuide labels as part of these required annual reports. 16 CFR 305.11. Manufacturers must submit data to the FTC both when they begin manufacturing new models and annually. 16 CFR 305.11; 42 U.S.C. 6296(b).

Reporting burden estimates are based on information from industry representatives. Manufacturers of some products, such as appliances and HVAC equipment, indicate that, for them, the reporting burden is best measured by the estimated time required to report on each model manufactured, while others, such as makers of fluorescent lamp ballasts and lamp products, state that an estimated number of annual burden hours by manufacturer is a more meaningful way to measure. The figures below reflect these different methodologies as well as the varied burden hour estimates provided by manufacturers of the different product categories that use the latter methodology.

Appliances, HVAC Equipment, Pool Heaters, and Televisions

Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model. Based on this estimate, multiplied by a total of 49,676 basic models of these products, the annual reporting burden for the appliance, HVAC equipment, and pool heater industry is an estimated 1,656 hours (2 minutes × 49,676 models ÷ 60 minutes per hour).

Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual reporting burden for manufacturers of fluorescent lamp ballasts, lamp products, and plumbing fixtures is based on the estimated average annual burden for each category of manufacturers, multiplied by the number of manufacturers in each respective category, as shown below:

| Category of manufacturer | Annual burden hours per manufacturer | Number of manufacturers | Total annual reporting burden hours |
|---|---|---|---|
| Fluorescent lamp ballasts | 6 | 20 | 120 |
| Lamp products | 15 | 50 | 750 |
| Plumbing products | 1 | 120 | 120 |

The total reporting burden for industries covered by the Rule is 2,646 hours annually (1,656 + 120 + 750 + 120).

*C. Recordkeeping*

EPCA and the Rule require manufacturers to keep the data generated from the tests required by the Rule. As with reporting, burden is calculated by number of models for appliances, HVAC equipment, pool heaters, and televisions, and by number of manufacturers for fluorescent lamp ballasts, lamp products, and plumbing products.

Appliances, HVAC Equipment, Pool Heaters, and Televisions

The recordkeeping burden for manufacturers of appliances, HVAC equipment, pool heaters, and televisions varies directly with the number of tests performed. Staff estimates total recordkeeping burden to be approximately 207 hours for these manufacturers, based on an estimated average of one minute per record stored (whether in electronic or paper format), multiplied by 12,419 tests [3] performed annually (1 × 12,419 ÷ 60 minutes per hour).

Fluorescent Lamp Ballasts, Lamp Products, and Plumbing Products

The total annual recordkeeping burden for manufacturers of fluorescent

[3] This is derived from 25% of 49,676 estimated models that are tested.

lamp ballasts, lamp products, and plumbing fixtures is based on the estimated average annual burden for each category of manufacturers (derived from industry sources), multiplied by the number of manufacturers in each respective category, as shown below:

| Category of manufacturer | Annual burden hours per manufacturer | Number of manufacturers | Total annual recordkeeping burden hours |
|---|---|---|---|
| Fluorescent lamp ballasts | 2 | 20 | 40 |
| Lamp products | 10 | 50 | 500 |
| Plumbing fixtures | 0.5 | 120 | 60 |

The total recordkeeping burden for industries covered by the Rule is 807 hours annually (207 + 40 + 500 + 60).

*D. Labeling*

EPCA and the Rule require that manufacturers of covered products provide certain information to consumers through labels on covered products. The burden imposed by this requirement consists of (1) the time needed to prepare labels, and (2) the time needed to affix required labels.

EPCA and the Rule specify the content, format, and specifications for the required labels, so manufacturers need only add the energy consumption figures derived from testing. In addition, most companies use automation to generate labels, and the labels do not change from year to year.

Given these considerations, staff estimates that the time to prepare labels for covered products (all covered products except plumbing and fluorescent lamp products, which do not have separate labels) is no more than four minutes per basic model. In addition, staff estimates that, on average, manufacturers draft or revise labels for 25% of the total basic models each year. Based on Department of Energy data, staff has estimated that manufacturers offer approximately 69,676 basic models of covered products. Based on these estimates, staff estimates that the approximate annual drafting burden involved in labeling covered products is 1,161 hours per year [69,676 (all basic models) × 25% × four minutes (drafting time per basic model) ÷ 60 (minutes per hour)].

Based on input from industry representatives and trade associations, staff estimates that it takes approximately 4 seconds to affix labels to products for retail sales.[4] Based on an average of 4 seconds per unit, the annual burden for affixing labels to covered products is 111,111 hours [4 (seconds) × 100,000,000 (the estimated number of total products shipped for sale annually) divided by 3,600 (seconds per hour)].[5]

The total labeling burden for all industries covered by the Rule is 112,272 (1,161 + 111,111) annually.

*E. Online and Retail Sales Catalog Disclosures*

The Rule requires that sellers offering covered products online or through retail sales catalogs (*i.e.,* those publications from which a consumer can order merchandise) disclose online or in the catalog energy or water consumption for each covered product. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the online or catalog presentation.

In the past, staff has estimated that there are 100 sellers who offer covered products through paper retail catalogs. While the Rule initially imposed a burden on catalog sellers by requiring that they draft disclosures and incorporate them into the layouts of their catalogs, paper catalog sellers now have substantial experience with the Rule and its requirements. Energy and water consumption information has obvious relevance to consumers, so sellers are likely to disclose much of the required information with or without the Rule. Accordingly, given the small number of catalog sellers, their experience with incorporating energy and water consumption data into their catalogs, and the likelihood that many of the required disclosures would be made in the ordinary course of business, staff believes that any burden the Rule imposes on these paper catalog sellers would be minimal.

Staff estimates that there are approximately 400 online sellers of covered products who are subject to the Rule's catalog disclosure requirements. Staff estimates that these online sellers each require approximately 17 hours per year to incorporate the data into their online catalogs. This estimate is based on the assumption that entry of the required information takes 1 minute per covered product and an assumption that the average online catalog contains approximately 1,000 covered products (based on a sampling of websites of affected retailers). Given that there is a great variety among sellers in the volume of products they offer online, it is very difficult to estimate such volume with precision. In addition, this analysis assumes that information for all 1,000 products is entered into the catalog each year. This assumption likely overstates the associated burden because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. The total catalog disclosure burden for all industries covered by the Rule is 6,800 hours (400 sellers × 17 hours annually).

*F. Online Label Posting*

The Rule require manufacturers to post images of their EnergyGuide and Lighting Facts labels online. Given approximately 69,676 total models (excluding plumbing and fluorescent lamp products, which do not have these labels) at an estimated five minutes per model, this requirement entails a burden of 5,806 hours.

*Estimated annual cost burden:* $24,690,012 in labor costs and $3,000,000 in other non-labor costs.

*Labor costs:* Staff derived labor costs by applying estimated mean hourly cost figures to the burden hours described above. In calculating the cost figures, staff assumes that test procedures are conducted by engineering technicians at an hourly rate of $32.10, and that recordkeeping and reporting, and labeling and marking, generally are performed by data entry personnel at an hourly rate of $18.97.[6]

[4] Estimates from trade association members for labeling costs ranged from 1 second to 8 seconds. Staff has chosen a middle-ground estimate of 4 seconds, although due to improvements in automation, staff believes this estimate likely overstates the time spent labeling most covered products.

[5] Includes only those product categories, such as showroom appliances and heating and cooling equipment, that must have separate labels affixed to them.

[6] These labor cost estimates are derived from the Bureau of Labor Statistics (''BLS'') figures in ''Table 1. National employment and wage data from the Occupational Employment and Wage Statistics survey by occupation, May 2022,'' available at *https://www.bls.gov/news.release/ocwage.t01.htm.*

| Activity | Burden hours per year | Wage category/mean hourly rate | Total annual labor cost |
|---|---|---|---|
| Testing | 693,320 | Engineering technicians ($32.10) | $22,255,572 |
| Reporting | 2,646 | Data Entry/Information Processing ($18.97) | 50,195 |
| Recordkeeping | 807 | Data Entry/Information Processing ($18.97) | 15,309 |
| Labeling | 112,272 | Data Entry/Information Processing ($18.97) | 2,129,800 |
| Online and Catalog disclosures | 6,800 | Data Entry/Information Processing ($18.97) | 128,996 |
| Online Label Posting | 5,806 | Data Entry/Information Processing ($18.97) | 110,140 |
| | | | 24,690,012 |

*Capital or Other Non-Estimated non-labor cost:* $3,000,000.

Manufacturers must incur the cost of procuring labels used in compliance with the Rule. Based on estimates of 100,000,000 units shipped annually, at an average cost of three cents for each label, the total (rounded) labeling cost is $3,000,000.

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 February 5, 2024. 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 ''Energy Labeling Rule, PRA Comment, P145403,'' 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. If possible, submit your paper comment to the Commission by overnight service.

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 February 5, 2024. 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. 2023–26602 Filed 12–4–23; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Notice of Closed Meeting

Pursuant to section 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–RFA–PS–24–063 Minority HIV Research Initiative (MARI): Epidemiologic, Behavioral, and Implementation Science Research in Racial/Ethnic Minority Communities Disproportionately Affected by HIV and Build Research Capacity Among Historically Underrepresented Researchers.

*Date:* February 22–23, 2024.

*Time:* 10 a.m.–5 p.m., EST.

*Place:* Videoconference.

*Agenda:* To review and evaluate grant applications.

**FOR FURTHER INFORMATION CONTACT:** Seraphine A. Pitt Barnes, Ph.D., MPH,

CHES, Scientific Review Official, National Center for HIV, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H24–6, Atlanta, Georgia 30329. Telephone: (770) 488–6115; Email: *spe6@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2023–26642 Filed 12–4–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS 3452–PN]**

### Medicare Program; Application by the Utilization Review Accreditation Commission (URAC) for Continued CMS Approval of Its Home Infusion Therapy (HIT) Accreditation Program

*Correction*

In Notice document, 2023–24850, appearing on pages 77321 through 77323, in the issue of Thursday, November 9, 2023, make the following correction:

On page 77321, in the second column, in the **DATES** section, the date ''December 11, 2023'' should read ''December 8, 2023''.

[FR Doc. C1–2023–24850 Filed 12–4–23; 8:45 am]

**BILLING CODE 0099–10–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; State Personal Responsibility Education Program (PREP) (Office of Management and Budget #0970–0380)

**AGENCY:** Family and Youth Services Bureau, Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Request for public comments.

**SUMMARY:** The Family and Youth Services Bureau (FYSB) within the Administration on Children, Youth and Families (ACYF) is requesting a 3-year extension of the State Personal Responsibility Program (PREP) state plans and performance progress report (OMB #0970–0380, expiration 12/31/2023). There are no changes requested to the state plan, but there are changes requested to the performance progress report. Changes include the addition of information related to equity activities and strategies to mitigate challenges.

**DATES:** *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

**ADDRESSES:** You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The State PREP has mandatory, formula allotments for state and territories to apply. The process is for states and territories to submit and for ACYF/FYSB to collect their state plans and semi-annual performance progress reports.

*Purpose and Use of the Information Collection:*

The state plan offers information about the proposed state project and has been and will continue to be used as the primary basis to determine whether or not the project meets the minimum requirements of the legislation for the grant award. There are no changes proposed to the state plan; FYSB is requesting to use these plans for another 3 years.

The Performance Progress Reports are collected semi-annually and inform the monitoring of the grantees' program design, program evaluation, management improvement, service quality, and compliance with agreed upon goals. ACYF/FYSB has and will continue to use the information to ensure effective service delivery for program participants. Finally, the data from this collection will be used to report outcomes and efficiencies and will provide valuable information to policy makers and key stakeholders in the development of program and research efforts. Changes are proposed to the Performance Progress Reports and include the addition of information related to equity activities and strategies to mitigate challenges.

*Respondents:* All 52 states and territories that are still eligible to accept their State PREP mandatory, formula allotments for funding.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Annual number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|
| State Plans | 52 | 1 | 40 | 2,080 |
| Performance Progress Reports | 52 | 2 | 30 | 3,120 |

*Estimated Total Annual Burden Hours:* 5,200.

*Comments:* The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

*Authority:* Section 513 of the Social Security Act (42 U.S.C. 713), as amended by section 50503 of the Bipartisan Budget Act of 2018 (Pub. L. 115–123) extended by Division CC, Title III, Section 302 of the Consolidated

Appropriations Act, 2021 (Pub. L. 116–260).

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2023–26658 Filed 12–4–23; 8:45 am]

**BILLING CODE 4184–37–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Community Living

### Agency Information Collection Activities; Proposed Collection; Comment Request; ACL Program Performance Report Generic Information Collection, OMB 0985–NEW

**SUMMARY:** The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on the proposed collection of information listed above. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice.

**DATES:** Comments on the collection of information must be submitted electronically by 11:59 p.m. (EST) or postmarked by February 5, 2024.

**ADDRESSES:** Submit electronic comments on the collection of information to: Shannon Skowronski to the ACL Office of Performance and Evaluation public comment inbox at *evaluation@acl.hhs.gov.* Submit written comments on the collection of information to Administration for Community Living, 330 C Street SW, Washington, DC 20201, Attention: Shannon Skowronski Office of Performance and Evaluation.

**FOR FURTHER INFORMATION CONTACT:** Shannon Skowronski at the ACL Office of Performance and Evaluation public comment inbox *evaluation@acl.hhs.gov* or at 202–795–7438 or *shannon.skowronski@acl.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** This announcement solicits comments on the ACL Program Performance Report Generic Information Collection, a mechanism to collect program performance reports for programs authorized by the Older Americans Act (Pub. L. 89–27 of 1965, as amended through Pub. L. 116–131 of 2020), and the Elder Justice Act (title XX of the Social Security Act, subtitle B, the Elder Justice Act of 2009).

Under the PRA, 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 as and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The PRA requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

ACL invites comments on burden estimates or other aspects of this collection of information, including:

(1) whether the proposed collection of information is necessary for the proper performance of ACL's functions, including whether the information will have practical utility;

(2) the accuracy of ACL's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine burden estimates;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

ACL will adhere to best practices for collection of all demographic information when this information is collected for the programs listed below in accordance with OMB guidance. This includes, but is not limited to, guidance specific to the collection of sexual orientation and gender identity (SOGI) items that align with Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, Executive Order 14075 on Advancing Equality for Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Individuals and Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation. Understanding these disparities can and should lead to improved service delivery for ACL's programs and populations served.

**Authorizing Legislation**

In 1965, the Older Americans Act (OAA) was passed in response to concerns by policymakers about a lack of community social services for older adults. The original legislation established authority for grants for community planning and social services, research and development projects, and personnel training in the field of aging. The OAA was last amended in 2020 (Pub. L. 116–131) and authorizes a variety of social and health services programs for older adults, families, and caregivers. The Elder Justice Act (EJA), passed in 2010, is the first comprehensive legislation to address the abuse, neglect, and exploitation of older adults at the federal level. The law authorized programs and initiatives that coordinate federal responses to elder abuse, promote elder justice research and innovation, support Adult Protective Services systems, and provide additional protections for residents of long-term care facilities. OAA and EJA programs help advance ACL's mission of supporting the independence, well-being, and health of older adults, older adults with disabilities, and their families and caregivers.

The OAA, EJA, 45 CFR 75.342 (monitoring and reporting program performance), 45 CFR 75.301 (performance measurement), and the GPRA Modernization Act of 2010 (Pub. L. 111–352, Sec 12) require grantee program performance monitoring and reporting. Grantee program performance reporting serves several functions, enabling ACL to: (1) monitor program achievement of performance objectives; (2) identify areas of performance that may benefit from technical assistance and/or corrective action; (3) establish program policy and direction; and (4) prepare responses and reports for Congress, the OMB, other federal departments, and public and private agencies, including legislatively required reports.

In order to streamline the collection of performance data and enhance efficacy, ACL is requesting approval of a generic IC for performance reporting for programs authorized under the OAA and EJA.

The proposed data collection instruments may be found on the ACL website for review at: *https://www.acl.gov/about-acl/public-input.*

*Estimated Program Burden:* ACL estimated total annual burden for this generic IC is 50,335.60 hours. This estimate is based on the current number of grantees for these programs, their number of program performance indicators, and previous ACL experience with program performance reporting.

| Respondent/data collection activity | Number of respondents | Responses per respondent | Hours per response | Annual burden hours |
|---|---|---|---|---|
| State Formula Grantees, SPR Generic | 112 | 1 | 70.3 | 7,873.60 |
| State Competitive Grants, PPR Generic | 56 | 2 | 1.0 | 112 |
| Tribal Formula Grantees, PPR Generic | 282 | 1 | 60 | 16,920 |
| Competitive Grantees, PPR Generic | 1,189 | 2 | 10 | 23,780 |
| Veteran Organization Competitive Grantees, PPR Generic | 275 | 12 | 0.5 | 1,650 |
| Total Annual Hours | | | | 50,335.60 |

Dated: November 30, 2023.

**Alison Barkoff,**

*Principal Deputy Administrator for the Administration for Community Living, performing the delegable duties of the Administrator and the Assistant Secretary for Aging.*

[FR Doc. 2023–26634 Filed 12–4–23; 8:45 am]

**BILLING CODE 4154–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Statement of Organization, Functions, and Delegations of Authority

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration's (FDA), Center for Biologics Evaluation and Research (CBER), Office of Blood Research and Review (OBRR) and the Office of Vaccines Research and Review (OVRR) have modified organizational structures.

**DATES:** These new organizational structures were approved by the Secretary of Health and Human Services on June 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** Yashika Rahaman, Director, Office of Planning, Evaluation and Risk Management, Office of Finance, Budget, Acquisitions and Planning, FDA, 4041 Powder Mill Road, Beltsville, MD 20705–4304, 301–796–3843.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Part D, Chapter D–B, (Food and Drug Administration), the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, 60 FR 56606, November 9, 1995, 64 FR 36361, July 6, 1999, 72 FR 50112, August 30, 2007, 74 FR 41713, August 18, 2009, 76 FR 45270, July 28, 2011, and 84 FR 22854, May 20, 2019) is revised to reflect FDA's reorganization of CBER, OBRR and OVRR.

CBER's mission is to protect and enhance public health through the regulation of biological and related products including blood, vaccines, allergenics, tissues, and cellular and gene therapies. With substantial growth in innovative, novel products, as well as a need to address an ever-changing landscape of potential public health threats, CBER is currently facing scientific, medical, and regulatory challenges that require changes to its structure.

In OBRR, the establishment of a Laboratory of Pathogen Reduction will address Center-level initiatives focusing on the optimization of new pathogen inactivation technologies. These technologies can dramatically help the American public and potentially reduce or eliminate donor deferral and/or testing requirements. Additionally, the proposed structural changes, keeping OBRR's functioning state of two divisions instead of three, will maintain operational consistency and enable the divisions to build on processes and efficiencies gained in the last 2 years.

In OVRR, the Division of Vaccines and Related Product Applications will split into the Division of Review Management and Regulatory Review and the Division of Clinical and Toxicology Review to allow for improved operational efficiency, appropriate supervisory ratios, and a better balance of workload within an area of increased demand.

Under Part D, FDA's CBER, Office of Blood Research and Review, has been restructured as follows:

DCB. ORGANIZATION. CBER is headed by the Center Director, Center for Biologics Evaluation and Research.

*Center for Biologics Evaluation and Research (DCB)*

Office of Blood Research and Review (DCBE)
- Administrative Staff (DCBE1)
- Regulatory Project Management Staff (DCBE2)

Laboratory of Pathogen Reduction (DCBE3)

Division of Emerging and Transfusion Transmitted Diseases (DCBEA)
- Laboratory of Molecular Virology (DCBEA1)
- Laboratory of Emerging Pathogens (DCBEA2)
- Product Review Branch (DCBEA4)
- Laboratory of Emerging Pathogens (DCBEA2)
- Product Review Branch (DCBEA4)

Division of Blood Components and Devices (DCBEB)
- Devices Review Branch (DCBEB2)
- Blood and Plasma Branch (DCBEB6)
- Laboratory of Cellular Hematology (DCBEB7)
- Laboratory of Biochemistry and Vascular Biology (DCBEB8)

Under Part D, FDA's CBER, Office of Vaccines Research and Review, has been restructured as follows:

DCB. ORGANIZATION. CBER is headed by the Center Director, Center for Biologics Evaluation and Research.

*Center for Biologics Evaluation and Research (DCB)*

Office of Vaccines Research and Review (DCBF)
- Program Operations Staff (DCBF1)

Division of Bacterial Parasitic and Allergenic Products (DCBFA)
- Laboratory of ImmunoBiochemistry (DCBFA1)
- Laboratory of Respiratory and Special Pathogens (DCBFA2)
- Laboratory of Bacterial Polysaccharides (DCBFA3)
- Laboratory of Mucosal Pathogens and Cellular Immunology (DCBFA4)

Division of Viral Products (DCBFB)
- Laboratory of Pediatric and Respiratory Viral Diseases (DCBFB1)
- Laboratory of Hepatitis Viruses (DCBFB2)
- Laboratory of Retroviruses (DCBFB3)
- Laboratory of DNA Viruses (DCBFB4)
- Laboratory of Vector Borne Diseases (DCBFB5)
- Laboratory of Method Development (DCBFB6)
- Laboratory of Immunoregulation (DCBFB7)

Division of Review Management and Regulatory Review (DCBFD)
- Regulatory Review Branch 1 (DCBFD1)
- Regulatory Review Branch 2

(DCBFD2) Regulatory Review Branch 3 (DCBFD3)
Review Management Support Branch (DCBFD4)
Division of Clinical and Toxicology Review (DCBFE)
Clinical Review Branch 1 (DCBFE1)
Clinical Review Branch 2 (DCBFE2)
Clinical Review Branch 3 (DCBFE3)
Toxicology Staff (DCBFE4)

**II. Delegations of Authority**

Pending further delegation, directives, or orders by the Commissioner of Food and Drugs, all delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegations, provided they are consistent with this reorganization.

**III. Electronic Access**

After completion of the necessary requirements for implementation, this reorganization will be reflected in FDA's Staff Manual Guide (SMG) at: *https://www.fda.gov/AboutFDA/ReportsManualsForms/StaffManualGuides/default.htm.*

*Authority:* 44 U.S.C. 3101.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2023–26512 Filed 12–4–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2020–N–0026]**

### Issuance of Priority Review Voucher; Rare Pediatric Disease Product

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the issuance of a priority review voucher to the sponsor of a rare pediatric disease product application. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the award of priority review voucher. FDA has determined that XENPOZYME (olipudase alfa-rpcp), manufactured by Genzyme Corporation, meets the criteria for a priority review voucher.

**FOR FURTHER INFORMATION CONTACT:** Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the issuance of a priority review voucher to the sponsor of an approved rare pediatric disease product application. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA has determined that XENPOZYME (olipudase alfa-rpcp), manufactured by Genzyme Corporation, meets the criteria for a priority review voucher. XENPOZYME (olipudase alfa-rpcp) is indicated for treatment of non-central nervous system manifestations of acid sphingomyelinase deficiency (ASMD) in adult and pediatric patients.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about XENPOZYME (olipudase alfa-rpcp), go to the ''Drugs@FDA'' website at *http://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: November 30, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–26652 Filed 12–4–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2017–N–5569]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Devices; Device Tracking

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) 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 January 4, 2024.

**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 0910–0442. 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, 10 a.m.–12 p.m., 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.

**Medical Devices; Device Tracking—21 CFR Part 821**

*OMB Control Number 0910–0442—Extension*

Section 519(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i(e)(1)) provides that FDA may require by order that a manufacturer adopt a method for tracking a class II or III medical device, if the device meets one of the three following criteria: (1) the failure of the device would be reasonably likely to have serious adverse health consequences, (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''), or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s-l/s device'') and is used outside a device user facility. Tracked device information is collected to facilitate identifying the current location of medical devices and patients possessing those devices, to the extent that patients permit the collection of identifying information. Manufacturers and FDA (where necessary) use the data to: (1) expedite the recall of distributed medical devices that are dangerous or defective and (2) facilitate the timely notification of patients or licensed practitioners of the risks associated with the medical device.

In addition, applicable regulations in 21 CFR part 821 (21 CFR 821.1 through 821.60) include provisions for: (1) exemptions and variances; (2) system and content requirements for tracking; (3) obligations of persons other than device manufacturers, *e.g.,* distributors; (4) records and inspection requirements; (5) confidentiality; and (6) record retention requirements.

Respondents to the collection of information are medical device manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals. We currently estimate 22,000 potential respondents.

In the **Federal Register** of August 8, 2023 (88 FR 53494), we published a 60-day notice soliciting comment on the proposed collection of information. No comments were received.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity; 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| Discontinuation of business—821.1(d) | 1 | 1 | 1 | 1 | 1 |
| Exemption or variance—821.2 and 821.30(e) | 1 | 1 | 1 | 1 | 1 |
| Notification of failure to comply—821.25(d) | 1 | 1 | 1 | 1 | 1 |
| Multiple distributor data—821.30(c)(2) | 1 | 1 | 1 | 1 | 1 |
| Total | | | | | 4 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

| Activity; 21 CFR section | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| Tracking information—821.25(a) | 12 | 1 | 12 | 76 | 912 |
| Record of tracking data—821.25(b) | 12 | 46,260 | 555,120 | 1 | 555,120 |
| Standard operating procedures—821.25(c) [2] | 12 | 1 | 12 | 63 | 756 |
| Manufacturer data audit—821.25(c)(3) | 12 | 1,124 | 13,488 | 1 | 13,488 |
| Multiple distributor data and distributor tracking records—821.30(c)(2) and (d) | 22,000 | 1 | 22,000 | 1 | 22,000 |
| Total | | | | | 592,276 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One-time burden.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

| Activity; 21 CFR section | Number of respondents | Number of disclosures per respondent | Total annual disclosures | Average burden per disclosure | Total hours |
|---|---|---|---|---|---|
| Acquisition of tracked devices and final distributor data—821.30(a) and (b) | 22,000 | 1 | 22,000 | 1 | 22,000 |
| Multiple distributor data and distributor tracking records—821.30(c)(2) and (d) | 1,100 | 1 | 1,100 | 1 | 1,100 |
| Total | | | | | 23,100 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Upon evaluation of the information collection, we have made no adjustment to our currently approved burden estimate of 615,380 hours annually, based on 12 tracking orders. We attribute the attendant burden to the following activities:

Under § 821.25(a), device manufacturers subject to FDA tracking orders must adopt a tracking method that can provide certain device, patient, and distributor information to FDA within 3 to 10 working days. Assuming one occurrence per year, we estimate it would take a firm 20 hours to provide FDA with location data for all tracked devices and 56 hours to identify all patients and/or multiple distributors possessing tracked devices.

Under § 821.25(d) manufacturers must notify FDA of distributor noncompliance with reporting requirements. Based on the number of audits manufacturers conduct annually, we estimate no more than one notice will be received in any year, and that it would take 1 hour per incident.

Under § 821.30(c)(2), multiple distributors must provide data on current users of tracked devices, current device locations, and other information, upon request from a manufacturer or FDA. Assuming one multiple distributor receives one request in a year from either a manufacturer or FDA, and that lists may be generated electronically, we estimate a burden of 1 hour to comply.

Under § 821.30(d) distributors must verify data or make required records available for auditing, if a manufacturer provides a written request. We assume 5 percent of tracked devices distributed for estimating burden. Each audited

database entry prompts one distributor audit response. Because lists may be generated electronically, we estimate a burden of 1 hour to comply.

Dated: November 30, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–26653 Filed 12–4–23; 8:45 am]

**BILLING CODE 4161–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Home Visiting Assessment of Implementation Quality Study: Exploring Family Voice and Leadership in Home Visiting

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than February 5, 2024.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* Home Visiting Assessment of Implementation Quality Study: Exploring Family Voice and Leadership in Home Visiting, OMB No. 0915–xxxx—[NEW]

*Abstract:* The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program, authorized by Social Security Act, title V, section 511 (42 U.S.C. 711) and administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and for parents with young children up to kindergarten entry. States, tribal entities, and certain nonprofit organizations are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. Funding recipients may subaward grant funds to local implementing agencies (LIAs) to provide home visiting services to eligible families in at-risk communities.

Through the Home Visiting Assessment of Implementation Quality Study, HRSA aims to examine specific components of the Home Visiting Implementation Quality Conceptual Framework to inform strategies for implementing high quality home visiting programs. One of the three quality components the study will focus on is family voice and leadership (FVL), which involves including families in decisions related to program implementation. The requested information collection will provide a better understanding of how MIECHV-funded home visiting programs currently engage families and will provide preliminary information on how FVL may influence home visiting implementation and program quality. Data collection activities include an online survey, focus groups, and interviews.

*Need and Proposed Use of the Information:* HRSA is seeking additional information about how the MIECHV Program engages and supports families in leadership opportunities to inform and improve programs. HRSA intends to use this information to identify actionable strategies that MIECHV awardees and LIAs could take to engage families meaningfully and effectively in program decisions and to ensure that families' unique strengths, needs, cultures, and preferences drive service delivery.

*Likely Respondents:* MIECHV Program awardees that are states, nonprofit organizations, and Tribes, LIA staff (program directors, coordinators, supervisors, and home visitors); and families who have been engaged in FVL activities by MIECHV-funded home visiting programs.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| MIECHV Program FVL Online Survey | 1,000 | 1 | 1,000 | 0.33 | 330 |
| Family Focus Group Protocol | 48 | 1 | 48 | 1.00 | 48 |
| Tribal and State MIECHV Administrators Interview Guide | 12 | 1 | 12 | 1.00 | 12 |
| LIA Program Staff Focus Group Protocol | 48 | 1 | 48 | 1.00 | 48 |
| Total | 1,108 | | 1,108 | | 438 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance

the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2023–26577 Filed 12–4–23; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Assessing Strategies To Promote Children's Engagement and Active Participation in Virtual Home Visits

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than February 5, 2024.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* Assessing Strategies to Promote Children's Engagement and Active Participation in Virtual Home Visits OMB No. 0915–xxxx [New].

*Abstract:* The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program, authorized by Social Security Act, title V, section 511 (42 U.S.C. 711) and administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and for parents with young children up to kindergarten entry. States, Tribal entities, and certain nonprofit organizations are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. Funding recipients may subaward grant funds to local implementing agencies to provide home visiting services to eligible families in at-risk communities.

This information collection is part of the Assessing and Describing Practice Transitions Among Evidence-Based Home Visiting Programs in Response to the COVID–19 Public Health Emergency Study, which aims to identify and study practices implemented in response to the COVID–19 public health emergency that support evidence-based practice and have the potential to enhance home visiting programming. One of the practices the study identified is strategies home visitors use to engage children and promote their active engagement during virtual visits. The purpose of this information collection is to better understand, through rapid cycle learning, how MIECHV-funded home visiting programs can implement virtual strategies improve child engagement and how home visitors can apply these strategies during in-person service delivery.

Information will be collected in four phases designed to (1) identify virtual child engagement strategies (co-definition phase); (2) pilot test and identify refinements to improve the implementation of strategies (installation phase); (3) iteratively test the strategies with refinements to their implementation (refinement phase); and (4) assess the potential of these child engagement strategies to improve service delivery and promote family engagement and family satisfaction with home visiting programs in both virtual and in-person settings (summary phase). Data collection activities include focus groups, online questionnaires, and review of documents and administrative data.

*Need and Proposed Use of the Information:* With the end of the COVID–19 public health emergency, most MIECHV-funded home visiting programs have transitioned back to some level of in-person service delivery. However, many continue to offer occasional virtual home visits if warranted and appropriate, such as during inclement weather or due to family and staff health concerns. Understanding the virtual strategies that home visitors used or are using to address the challenges of engaging children during virtual home visits, how these strategies can be implemented, how these strategies and learned lessons can be applied to in-person settings, and how children and families respond to these strategies will be valuable to the field. HRSA intends to use collected information to share evidence-informed resources and strategies that MIECHV awardees can use to optimize children's engagement and active participation and strengthen their home visiting services.

*Likely Respondents:* Respondents include (1) families who receive home visiting services and (2) MIECHV-funded home visiting program staff, which may include program directors, managers, supervisors, and home visitors.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Program Eligibility Protocol | 16 | 1 | 16 | 1.00 | 16.0 |
| Program Staff Focus Group Protocol 1 (Co-definition Phase) | 24 | 1 | 24 | 1.50 | 36.0 |
| Program Staff Focus Group Protocol 2 (Co-definition Phase) | 24 | 1 | 24 | 1.50 | 36.0 |
| Program Staff Focus Group Protocol (Installation & Refinement Phases) | 24 | 3 | 72 | 1.00 | 72.0 |
| Program Staff Focus Group Protocol (Summary Phase) | 24 | 1 | 24 | 1.00 | 24.0 |
| Family Focus Group Protocol (Co-definition & Summary Phases) | 48 | 1 | 48 | 1.00 | 48.0 |
| Home Visitor Questionnaire (Installation & Refinement Phases) | 40 | 9 | 360 | 0.17 | 61.2 |
| Family Post-Visit Questionnaire (Refinement Phase) | 48 | 6 | 288 | 0.08 | 23.0 |
| Focus Group Participant Characteristics Form (All Phases) | 120 | 1 | 120 | 0.08 | 9.6 |
| Total | 368 | | 976 | | 325.8 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2023–26582 Filed 12–4–23; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Home Visiting Assessment of Implementation Quality Study: Better Addressing Disparities Through Home Visiting

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than February 5, 2024.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* Home Visiting Assessment of Implementation Quality Study: Better Addressing Disparities through Home Visiting, OMB No. 0915–xxxx—[NEW]

*Abstract:* The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program, authorized by Social Security Act, title V, section 511 (42 U.S.C. 711) and administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and for parents with young children up to kindergarten entry. States, tribal entities, and certain nonprofit organizations are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. Funding recipients may subaward grant funds to local implementing agencies (LIAs) to provide home visiting services to eligible families in at-risk communities.

Through the Home Visiting Assessment of Implementation Quality Study, HRSA aims to examine specific components of the Home Visiting Implementation Quality Conceptual Framework to inform strategies for implementing high quality home visiting programs. One of the three quality components the study will focus on is addressing disparities. HRSA will explore how families that experience disparities in outcomes targeted by the MIECHV Program experience home visiting services. The requested information collection is an initial step in understanding those experiences and will provide a better understanding of how MIECHV-funded home visiting programs currently address disparities and promote equity. Data collection activities include interviews, focus groups, online surveys, program observations, and review of documents and management information systems data.

*Need and Proposed Use of the Information:* HRSA is seeking additional information about families' experiences within home visiting and strategies the MIECHV Program has used to address disparities in their work with families. HRSA intends to use this information to identify actionable strategies that MIECHV awardees and LIAs could take to remove potential obstacles to family enrollment in home visiting services and to help address health disparities.

*Likely Respondents:* MIECHV Program awardees that are states, nonprofit organizations, and tribes; LIA staff (program directors, coordinators, supervisors, and home visitors); and families that experience greater

disparities in maternal and newborn health (families participating in MIECHV-funded home visiting services).

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS [1]

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Request for Information about LIAs | 28 | 1 | 28 | 0.25 | 7 |
| LIA and Family Nomination Form | 70 | 1 | 70 | 2.00 | 140 |
| Family Online Survey | 210 | 1 | 210 | 0.50 | 105 |
| Family Focus Group Protocol | 52 | 1 | 52 | 1.00 | 52 |
| Home Visitor Group Interview Protocol | 10 | 1 | 10 | 1.00 | 10 |
| LIA Leadership Interview Protocol | 6 | 1 | 6 | 1.00 | 6 |
| Family Case Study Focus Group Protocol | 12 | 1 | 12 | 1.00 | 12 |
| Total | 388 | | 388 | | 332 |

[1] There may be variation in the number of study participants (*e.g.,* some programs may have fewer home visitors). The total burden hours presented here provide information assuming the maximum number of respondents in each community.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2023–26580 Filed 12–4–23; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Assessing the Use of Coaching To Promote Positive Caregiver-Child Interactions in Home Visiting

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than February 5, 2024.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* Assessing the Use of Coaching to Promote Positive Caregiver-Child Interactions in Home Visiting OMB No. 0906–xxxx—[New]

*Abstract:* The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program, authorized by the Social Security Act, title V, § 511 (42 U.S.C. 711) and administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and for parents with young children up to kindergarten entry. States, tribal entities, and certain nonprofit organizations are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. Funding recipients may subaward grant funds to local implementing agencies to provide home visiting services to eligible families in at-risk communities.

This information collection is part of the Assessing and Describing Practice Transitions Among Evidence-Based Home Visiting Programs in Response to the COVID–19 Public Health Emergency Study. This study aims to identify and study practices implemented in response to the COVID–19 public health emergency that support evidence-based practice and have the potential to enhance home visiting programming. One of the practices the study identified is the use of coaching to promote caregiver-child interactions and positive caregiving skills. Coaching involves a home visitor providing instructions to the parent or caregiver as they carry out the skill and differs from a common home visiting strategy modeling in which home visitors first demonstrate a skill themselves before asking the parent or caregiver to try it. The purpose of this information collection is to better understand, through rapid cycle learning, how MIECHV-funded home visiting programs can implement coaching strategies during home visits.

Information will be collected in four phases designed to (1) define coaching strategies (co-definition phase); (2)

identify potential refinements to improve coaching strategies (installation phase); (3) iteratively test the refinements (refinement phase); and (4) assess the potential of coaching strategies to improve service delivery and promote family engagement and family satisfaction with home visiting programs (summary phase). Data collection activities include focus groups, online questionnaires, and review of documents and administrative data.

*Need and Proposed Use of the Information:* The COVID–19 public health emergency led the MIECHV Program to rapidly adjust practices, within the bounds of evidence-based home visiting model guidance, to reduce service delivery disruptions while protecting the health and safety of home visiting participants and the home visiting workforce. Largely prompted by the shift to virtual home visits, one of these practice changes was to use coaching to promote positive caregiving skills and family-child interactions. Home visitors suggested that using coaching strategies enhanced the way that home visitors worked with families, particularly in virtual settings when home visitors were unable to use modeling strategies (*e.g.,* in-person demonstrations by home visitors). Some findings indicate that home visitors who used coaching perceived that it led to improved family engagement and caregiver confidence in interacting with their child. However, other findings suggest that some families may not prefer coaching over modeling and that coaching may create a burden on home visitors. As home visitors transition back to primarily in-person home visits, there is a need for more information about strategies to support the implementation of coaching to effectively promote positive caregiver-child interactions in virtual and in-person settings, while reducing home visitor burden and increasing family acceptance of this strategy. HRSA intends to use the information collected to provide evidence-informed resources and strategies that MIECHV awardees can use to inform their use of coaching strategies to strengthen home visiting services.

*Likely Respondents:* Respondents include families who receive home visiting services and MIECHV-funded home visiting program staff, which may include program directors, managers, supervisors, and home visitors.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Program Eligibility Protocol | 16 | 1 | 16 | 1.00 | 16.0 |
| Program Staff Focus Group Protocol 1 (Co-definition Phase) | 24 | 1 | 24 | 1.50 | 36.0 |
| Program Staff Focus Group Protocol 2 (Co-definition Phase) | 24 | 1 | 24 | 1.50 | 36.0 |
| Program Staff Focus Group Protocol (Installation & Refinement Phases) | 24 | 3 | 72 | 1.00 | 72.0 |
| Program Staff Focus Group Protocol (Summary Phase) | 24 | 1 | 24 | 1.00 | 24.0 |
| Family Focus Group Protocol (Co-definition & Summary Phases) | 48 | 1 | 48 | 1.00 | 48.0 |
| Home Visitor Questionnaire (Installation & Refinement Phases) | 40 | 9 | 360 | 0.17 | 61.2 |
| Family Post-Visit Questionnaire (Refinement Phase) | 48 | 6 | 288 | 0.08 | 23.0 |
| Focus Group Participant Characteristics Form (All Phases) | 120 | 1 | 120 | 0.08 | 9.6 |
| Total | 368 | | 976 | | 325.8 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2023–26581 Filed 12–4–23; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Assessing the Use of Informal Contacts To Promote Caregivers' Engagement and Satisfaction With Home Visiting

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than February 5, 2024.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance

Officer, Room 14N39, 5600 Fishers Lane, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Joella Roland, the HRSA Information Collection Clearance Officer, at (301) 443–3983.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the ICR title for reference.

*Information Collection Request Title:* Assessing the Use of Informal Contacts to Promote Caregivers' Engagement and Satisfaction with Home Visiting OMB No. 0915–xxxx—[New].

*Abstract:* The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program, authorized by Social Security Act, title V, section 511 (42 U.S.C. 711) and administered by HRSA in partnership with the Administration for Children and Families, supports voluntary, evidence-based home visiting services during pregnancy and for parents with young children up to kindergarten entry. States, tribal entities, and certain nonprofit organizations are eligible to receive funding from the MIECHV Program and have the flexibility to tailor the program to serve the specific needs of their communities. Funding recipients may subaward grant funds to local implementing agencies to provide home visiting services to eligible families in at-risk communities.

This information collection is part of the Assessing and Describing Practice Transitions Among Evidence-Based Home Visiting Programs in Response to the COVID–19 Public Health Emergency Study. This study aims to identify and study practices implemented in response to the COVID–19 public health emergency that support evidence-based practice and have the potential to enhance home visiting programming. One of the practices the study identified is the use of informal contacts. Informal contacts are any contacts between a home visitor and family that occur between formal home visits (*e.g.,* text messages, emails). The purpose of this information collection is to better understand, through rapid cycle learning, how MIECHV-funded home visiting programs can use informal contacts to improve service delivery and promote caregiver's engagement and satisfaction.

Information will be collected in four phases designed to (1) identify informal contact strategies (co-definition phase); (2) pilot test and identify refinements to improve the implementation of strategies (installation phase); (3) iteratively test the strategies with refinements to their implementation (refinement phase); and (4) assess the potential of informal contact strategies to improve service delivery and promote family engagement and family satisfaction with home visiting programs (summary phase). Data collection activities include focus groups, online questionnaires, and review of documents and administrative data.

*Need and Proposed Use of the Information:* The onset of the COVID–19 public health emergency prompted home visitors to use telephone, text, and social media direct messaging to informally contact families on a more frequent basis—in some instances, daily. This practice has continued for some programs even after the end of the public health emergency and the transition back to in-person service delivery. Current evidence suggests considerable variation in strategies used by home visiting programs with regards to context, type, frequency, and purpose of informal contacts. While increasing contacts helped home visitors to build rapport and further address family needs, other findings suggest that informal contacts can place pressure on families to engage with home visitors beyond what they have the capacity for and increase the workloads of home visitors. Given these initial findings and the increased use of informal contacts since the public health emergency, there is a need for more information about how home visitors contact families outside of home visits, variations in strategies, how families perceive the strategies, and how to address challenges around informal contacts. HRSA intends to use collected information to provide evidence-informed resources and strategies that MIECHV awardees can use to effectively engage and communicate with families between scheduled home visits.

*Likely Respondents:* Respondents include families who receive home visiting services and MIECHV-funded visiting program staff, which may include program directors, managers, supervisors, and home visitors.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Program Eligibility Protocol | 16 | 1 | 16 | 1.00 | 16.0 |
| Program Staff Focus Group Protocol 1 (Co-definition Phase) | 24 | 1 | 24 | 1.50 | 36.0 |
| Program Staff Focus Group Protocol 2 (Co-definition Phase) | 24 | 1 | 24 | 1.50 | 36.0 |
| Program Staff Focus Group Protocol (Installation & Refinement Phases) | 24 | 3 | 72 | 1.00 | 72.0 |
| Program Staff Focus Group Protocol (Summary Phase) | 24 | 1 | 24 | 1.00 | 24.0 |
| Family Focus Group Protocol (Co-definition & Summary Phases) | 48 | 1 | 48 | 1.00 | 48.0 |
| Home Visitor Questionnaire (Installation & Refinement Phases) | 40 | 9 | 360 | 0.17 | 61.2 |
| Family Post-Visit Questionnaire (Refinement Phase) | 48 | 6 | 288 | 0.08 | 23.0 |

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Focus Group Participant Characteristics Form (All Phases) | 120 | 1 | 120 | 0.08 | 9.6 |
| Total | 368 | | 976 | | 325.8 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2023–26586 Filed 12–4–23; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Biophysics and Biochemistry Fellowship Review, December 13, 2023, 11:00 a.m. to December 13, 2023, 05:00 p.m., National Institutes of Health, Rockledge II 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on November 28, 2023, 88 FR 83143, Doc 2023–26127.

This meeting is being amended to change the meeting panel name from ''Biophysics and Biochemistry Fellowship Review'' to ''Topics in Biophysics and Biochemistry''. The meeting is closed to the public.

Dated: November 30, 2023.

**David W. Freeman,**

*Supervisory Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–26667 Filed 12–4–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Institutional Network Applications for Promoting Kidney, Urologic, and Hematologic Research Training (U2C–TL1).

*Date:* March 26–27, 2024.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20892, 301–496–9010, *hoffertj@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 29, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–26630 Filed 12–4–23; 8:45 am]

**BILLING CODE 4140–01–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; Neurological Disorders and Multiple Sclerosis.

*Date:* December 18, 2023.

*Time:* 2:00 p.m. to 6:00 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:* Aleksey Gregory Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, (301) 435–1042, *aleksey.kazantsev@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: November 30, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–26669 Filed 12–4–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pilot Interventions to Integrate Social Care and Medical Care to Improve Health Equity.

*Date:* February 27, 2024.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIDDK Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Michele L. Barnard, Ph.D. Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 29, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–26632 Filed 12–4–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Evaluating Neurocognitive Complications of Pediatric Type 1 Diabetes.

*Date:* March 12, 2024.

*Time:* 10:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 29, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–26631 Filed 12–4–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel; Small Research Grants (R03) for Secondary Data PARs.

*Date:* February 15, 2024.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Dental and Craniofacial Research, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Christopher T Campbell, Ph.D., MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Bethesda, MD 20892, (301) 594–5593, *christopher.campbell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 30, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023–26670 Filed 12–4–23; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. CISA–2023–0017]**

### Agency Information Collection Activities: CISA Gateway User Registration

**AGENCY:** Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

**ACTION:** 60-Day notice and request for comments; reinstatement, 1670–0009.

**SUMMARY:** DHS CISA ISD will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance.

**DATES:** Comments are due by February 5, 2024.

**ADDRESSES:** You may submit comments, identified by docket number CISA–2023–0017 at:

*Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without

alteration at *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket and comments received, please go to *www.regulations.gov* and enter docket number CISA–2023–0017.

Comments submitted in response to this notice may be made available to the public through relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Ricky Morgan, 703–235–9545, *CISA-GatewayHelpDesk@CISA.DHS.GOV.*

**SUPPLEMENTARY INFORMATION:** The Homeland Security Presidential Directive–7, Presidential Policy Directive–21, and the National Infrastructure Protection Plan highlight the need for a centrally managed repository of infrastructure attributes capable of assessing risks and facilitating data sharing. To support this mission need, the DHS CISA ISD developed the CISA Gateway. The CISA Gateway contains several capabilities which support the homeland security mission in the area of critical infrastructure (CI) protection.

The purpose of this collection is to gather the details pertaining to the users of the CISA Gateway for the purpose of creating accounts to access the CISA Gateway. This information is also used to verify a need to know to access the CISA Gateway. After being vetted and granted access, users are prompted and required to take an online training course upon first logging into the system. After completing the training, users are permitted full access to the system. In addition, this collection will gather feedback from the users of the CISA Gateway to determine any future system improvements.

The information gathered will be used by the CISA Gateway Program Management Team to vet users for a need to know and grant access to the system. As part of the registration process, users are required to take a one-time online training course. When logging into the system for the first time, the system prompts users to take the training courses. Users cannot opt out of the training and are required to take the course in order to gain and maintain access to the system. When users complete the training, the system automatically logs that the training is complete and allows full access to the system.

The collection of information uses automated electronic forms. During the online registration process, there is an electronic form used to create a user account and an online training course required to grant access.

The collection was initially approved on October 9, 2007 and the most recent approval was on August 28, 2020 with an expiration date of August 31, 2023. The changes to the collection since the previous OMB approval include: updating the title of the collection, decrease in burden estimates and decrease in costs. The total annual burden cost for the collection has decreased by $1,193, from $5,321 to $4,128 due to the removal of the utilization survey. The total number of responses has decreased from 350 to 200 due to the removal of the utilization survey. The annual government cost for the collection has decreased by $6,945 from $12,668 to 5,723, due to the removal of the utilization survey.

This is a reinstatement with changes of an information collection. OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**Analysis**

*Agency:* Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

*Title of Collection:* CISA Gateway User Registration.

*OMB Control Number:* 1670–0009.

*Frequency:* Annually.

*Affected Public:* State, Local, Tribal, and Territorial Governments and Private Sector Individuals.

*Number of Annualized Respondents:* 200.

*Estimated Time per Respondent:* 0.17 hours for Registration, 0.5 hours for Training.

*Total Annualized Burden Hours:* 67 hours.

*Total Annualized Respondent Opportunity Cost:* $4,128.

Total Annualized Respondent Out-of-Pocket Cost: $0.

*Total Annualized Government Cost:* $5,723.

**Robert J. Costello,**

*Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.*

[FR Doc. 2023–26600 Filed 12–4–23; 8:45 am]

**BILLING CODE 9110–9P–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7071–N–28]**

## 60-Day Notice of Proposed Information Collection: Multifamily Project Construction Contract, Building Loan Agreement, and Construction Change Request (Form HUD–92437); OMB Control No.: 2502–0011

**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:* February 5, 2024.

**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 and communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

**A. Overview of Information Collection**

*Title of Information Collection:* Request for Construction on Project Mortgages.

*OMB Approval Number:* 2502–0011.

*Type of Request:* Reinstatement, with change, of previously approved collection for which approval has expired.

*Form Number:* HUD–92437.

*Description of the need for the information and proposed use:*

The previous OMB collection reflects an accurate assessment of the numbers submitted under this collection, which included two forms used by OMAPO, formally Contract Administration, CA (HUD–92442–CA, HUD–92442–A–CA). In addition, the specific forms, HUD–92441, HUD–92442, and HUD–92442–A, have been deleted under this collection and placed under the Closing documents, OMB control number 2502–0598. The current numbers were based on the average of three fiscal years of initial endorsements. Furthermore, the numbers under this collection reflect a healthy housing industry since 2010 in which credit markets stabilized and interest rates were low and Multifamily housing occupancy was very strong. HUD plays a vital part in the housing industry and the increased numbers reflect that strong demand. This form HUD–92437 serves as the project's change order involving changes to contact work, contract price, or contract time. All on-site construction changes are submitted on this form. The contractor, architect, mortgagor, and mortgagee must approve the proposed changes before the request is submitted to HUD for approval. The form ensures that viable projects are developed.

*Respondents:* Individuals participating in HUD Multifamily mortgage insurance programs as principals of sponsors, mortgagors, and general contractors.

*Estimated Number of Respondents:* 1,174.

*Estimated Number of Responses:* 3,522.

*Frequency of Response:* 3.

*Average Hours per Response:* 2.

*Total Estimated Burden:* 7,044.

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

**Jeffrey D. Little,**

*General Deputy Assistant Secretary, Office of Housing.*

[FR Doc. 2023–26690 Filed 12–4–23; 8:45 am]

**BILLING CODE 4210–67–P**

## INTER–AMERICAN FOUNDATION

### Sunshine Act Meetings

**TIME AND DATE:** December 11, 2023, ET. 1:30 p.m.–3 p.m.

**PLACE:** Via Zoom.

**STATUS:** Meeting of the Board of Directors, open to the public.

**MATTERS TO BE CONSIDERED:**

- Call to Order
- Overview of Meeting Rules by General Counsel
- Approval of October 10, 2023 Minutes
- Check in on FY 2024 Strategic Priorities
- Evolve the program model
- Champion community-led development
- Drive greater efficiencies of processes and expenses
- Strengthen employee engagement and culture
- Adjournment

Any requests to attend the Meeting of the Board of Directors should be submitted by 2 p.m. on December 8th.

**CONTACT PERSON FOR MORE INFORMATION:** Nicole Stinson, Associate General Counsel, (202) 683–7117 or *nstinson@iaf.gov.*

*For Dial-in Information Contact:* Nicole Stinson, Associate General Counsel, *nstinson@iaf.gov.*

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552b.

**Natalia Mandrus,**

*Associate General Counsel.*

[FR Doc. 2023–26771 Filed 12–1–23; 11:15 am]

**BILLING CODE 7025–01–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037012; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: University of California, Berkeley, Berkeley, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of California, Berkeley intends to repatriate certain cultural items that meet the definition of sacred objects and have a cultural affiliation with the Native Hawaiian organizations in this notice. The cultural items were removed from the Hawaiian Islands.

**DATES:** Repatriation of the cultural items in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Alexandra Lucas, Repatriation Coordinator, Government

and Community Relations (Chancellor's Office), University of California, Berkeley, 200 California Hall, Berkeley, CA 94720, telephone (510) 570–0964, email *nagpra-ucb@berkeley.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of California, Berkeley. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the University of California, Berkeley.

### Description

Between 1881 and 1917, 29 sacred objects were removed from the Hawaiian Islands by, variously, the Alaska Commercial Company, Arthur Rodgers, François L. A. Pioche, H.W. O'Melveny, Jackson R. Myers, Phoebe Apperson Hearst, and other unknown collectors, and were donated to the Lowie Museum (Phoebe A. Hearst Museum of Anthropology). The sacred objects are one ʻopuʻu (pendant), one ʻumeke (bowl), 10 hoana (grindstone), one ʻihe (spear), one ipu ʻaina (scrap bowl), one ipu kuha (spittoon), two kūpeʻe (anklet/bracelet), one makau (fishhook) or niho palaoa (whale tooth pendent), four niho palaoa (whale tooth pendent), two lei niho palaoa (whale tooth pendent human hair necklace) and five lei lauoho (human hair necklace). The human hair in the two lei niho palaoa and five lei lauoho are reasonably believed to have been freely given or naturally shed by the individuals from whom it was obtained.

Five sacred objects were removed from the Hawaiian Islands by Mr. and Mrs. Gardner Dailey and were donated in 1970 to the Lowie Museum (Phoebe A. Hearst Museum of Anthropology). The sacred objects are five lei hulu (feather necklace).

Also, 301 additional items which are not 'cultural items' under NAGPRA are being returned pursuant to the University of California Native American Cultural Affiliation and Repatriation Policy, Section V.G., *Voluntary Deaccessioning of Items which are not NAGPRA/CalNAGPRA-eligible.*

### Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Tribal traditional knowledge, geographical, and historical.

### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of California, Berkeley has determined that:

- The 34 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Council for Native Hawaiian Advancement, and Hui Iwi Kuamoʻo.

### Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the University of California, Berkeley must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of California, Berkeley is responsible for sending a copy of this notice to the Native Hawaiian organizations identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26617 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037007; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at Fort Totten in Benson County, ND, Pierre Indian School in Hughes County, SD, ''Standing Rock School'' in Fort Yates, Sioux County, ND, and ''U.S. Indian School'' (now Flandreau Indian School) in Flandreau, Moody County, SD.

**DATES:** Repatriation of the human remains in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

### Description

Human remains representing, at minimum, 52 individuals, were collected at Fort Totten in Benson County, ND. The human remains are hair clippings collected from one individual recorded as 69 years old, one individual recorded as 67 years old, one individual recorded as 66 years old, one individual recorded as 62 years old, two individuals recorded as 61 years old, two individuals recorded as 56 years old, one individual recorded as 55 years

old, two individuals recorded as 52 years old, two individuals recorded as 50 years old, one individual recorded as 49 years old, one individual recorded as 48 years old, one individual recorded as 46 years old, one individual recorded as 35 years old, one individual recorded as 33 years old, one individual recorded as 32 years old, one individual recorded as 29 years old, one individual recorded as 27 years old, one individual recorded as 26 years old, one individual recorded as 24 years old, one individual recorded as 23 years old, one individual recorded as 21 years old, one individual recorded as 18 years old, two individuals recorded as 16 years old, one individual recorded as 15 years old, four individuals recorded as 13 years old, six individuals recorded as 12 years old, two individuals recorded as 11 years old, five individuals recorded as 10 years old, four individuals recorded as 9 years old, one individual recorded as 8 years old, and one individual recorded as 3 years old. All these individuals were identified as ''Sioux.'' Orrin C. Gray took the hair clippings at Fort Totten between 1930 and 1933. Gray sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, four individuals, were collected at the Pierre Indian School in Hughes County, SD. The human remains are hair clippings collected from one individual recorded as 19 years old, one individual recorded as 14 years old, and two individuals recorded as 13 years old. All these individuals were identified as ''Sioux.'' C.B. Dickinson took the hair clippings at the Pierre Indian School between 1930 and 1933. Dickinson sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual, from the ''Standing Rock School'' at Fort Yates in Sioux County, ND. The human remains are hair clippings collected from one individual recorded as 25 years old and identified as ''Sioux.'' E. D. Mossman took the hair clippings at the ''Standing Rock School'' between 1930 and 1933. Mossman sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, four individuals, were collected at the ''U.S. Indian School'' (now Flandreau Indian School) in Flandreau, Moody County, SD. The human remains are hair clipping collected from one individual recorded as 20 years old, two individuals recorded as 18 years old, and one individual recorded as 17 years old. All these individuals were identified as ''Sioux.'' George E. Peters took the hair clippings at the ''U.S. Indian School'' (now Flandreau Indian School) between 1930 and 1933. Peters sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

### Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 61 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota and the Spirit Lake Tribe, North Dakota.

### Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26613 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037014; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Intent To Repatriate Cultural Items: Los Angeles County Museum of Natural History, Los Angeles, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Los Angeles County Museum of Natural History (LACMNH) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and certain cultural items that meet the definition of objects of cultural patrimony, and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Orange and Los Angeles Counties, CA.

**DATES:** Repatriation of the cultural items in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Amy E. Gusick, NAGPRA Officer, Los Angeles County Museum of Natural History, 900 Exposition Boulevard, Los Angeles, CA 90007, telephone (213) 763–3370, email *agusick@nhm.org.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the LACMNH. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the LACMNH.

**Description**

At various times, 226 objects of cultural patrimony were removed from Laguna Beach in Orange County, CA. In 1935, A.D. Griffin found one object (a digging tool) at an unidentified site in Laguna Beach. Subsequently, this item was donated to LACMNH. At a date prior to 1971, Carl D. Hegner collected one object (a donut-shaped stone) from an unidentified site in Laguna Beach, and in 1971, the Native Daughters of the Golden West donated this item to LACMNH. At a date prior to 1966, University of Southern California professor W.J. Wallace excavated 201 objects from Cameo Cove in Laguna Beach. These items were transferred to the Laboratory of Anthropology of the Hancock Foundation (Hancock Foundation), a now-disbanded museum that was once part of the University of Southern California. On February 1, 1966, the Hancock Foundation loaned these items to LACMNH, and on March 29, 1983, the loan was converted to a donation. At one or more dates prior to 1966, 23 cultural items were removed from unidentified sites in Laguna Beach and transferred to the Hancock Foundation. On February 1, 1966, the Hancock Foundation loaned these items to LACMNH, and on March 29, 1983, the loan was converted to a donation. The 226 objects of cultural patrimony are one bead, four cobble tools, five cores, one donut-shaped stone, 90 faunal bones or bone fragments, six fire affected stones, 15 flaked stones, two groundstone fragments, one hammerstone, seven manos or mano fragments, one grooved maul, five metates or metate fragments, two ochre fragments, one mortar, two pestle fragments, eight rocks, one scraper, 73 stones, and one unidentified lithic tool.

In 1954, University of Southern California professor W.J. Wallace excavated 22 associated funerary objects at the Los Altos site (LAN–270) in Long Beach, Los Angeles County, CA. These items were transferred to the Hancock Foundation, and in 1983, the Hancock Foundation donated them to LACMNH. The 22 unassociated funerary objects are three rattles, two bone tubes, one shell, one bead, two stones, four containers or container fragments, six tools, two projectile points, and one faunal bone.

**Cultural Affiliation**

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, historical, oral traditional, and Indigenous knowledge.

The Acjachemen Nation, Gabrieleno Tribes, and Tongva Tribes (''People of the Earth'') have strong cultural ties to the Laguna Beach and Long Beach coastlines. In particular, Puvungna, located on the California State University, Long Beach campus, is a site sacred to the Gabrieleno, Tongva, and Acjachemen as being associated with their Creation account and Tribal history, and is the locus of annual pilgrimages by them. The Luiseño people, which include the Pechanga Band of Indians, share cultural practices and beliefs with the Gabrieleno, Tongva, and Acjachemen, and all four groups are linguistically related.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the LACMNH has determined that:

- The 22 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- The 226 cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Pechanga Band of Indians (*Previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California).

**Requests for Repatriation**

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the LACMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The LACMNH is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26619 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037008; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Santa Barbara and Los Angeles Counties, CA.

**DATES:** Repatriation of the human remains in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Patricia Capone, PMAE, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu*.

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the

determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

**Description**

Human remains representing, at minimum, 25 individuals were removed from the Channel Islands, CA. In 1875, Paul Schumacher led a joint expedition on behalf of PMAE and the Smithsonian Institution to what he referred to as the Santa Barbara Islands, which are today known as the Channel Islands. During this expedition, he removed human remains from San Miguel Island (Santa Barbara County), Santa Cruz Island (Santa Barbara County), San Nicolas Island (Ventura County), and Santa Catalina Island (Los Angeles County). The Smithsonian Institution received the majority of those human remains. One hundred crania removed from San Miguel Island and Santa Cruz Island, and 25 mandibles identified as coming from the Santa Barbara Islands were sent to PMAE. Based on PMAE having received human remains that came from San Miguel Island and Santa Cruz Island, the mandibles most likely came from one or both of those islands, too. No known associated funerary objects are present.

Human remains, representing at minimum, one individual were removed from Santa Barbra County, California. In 1934, PMAE received these human remains from the Gila Pueblo Foundation, which identified them as coming from Hope Ranch in Santa Barbara County, CA. No known associated funerary objects are present.

Human remains, representing at minimum one individual, were removed from Los Angeles County, CA. In 1939, Isaac Richardson donated to the PMAE the remains of an individual that were recovered from Los Angeles County, CA. The individual was unearthed by a steam shovel in Los Flores Canyon, five miles from Santa Monica on Roosevelt Highway. No known associated funerary objects are present.

**Cultural Affiliation**

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of evidence were used to reasonably trace the relationship: oral traditional, geographical, and biological.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 27 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

**Requests for Repatriation**

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26612 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037013; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Los Angeles County Natural History Museum, Los Angeles, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Los Angeles County Natural History Museum (LACNHM) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes in this notice. The human remains were removed from Orange and Los Angeles Counties, CA.

**DATES:** Repatriation of the human remains in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Amy E. Gusick, NAGPRA Officer, Los Angeles County Museum of Natural History, 900 Exposition Boulevard, Los Angeles, CA 90007, telephone (213) 763–3370, email *agusick@nhm.org*.

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the LACNHM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the LACNHM.

**Description**

At an unknown date, human remains representing, at a minimum, one individual were removed from Laguna Beach in Orange County, CA, and at an unknown date, they were transferred to the Laboratory of Anthropology of the Hancock Foundation, a now disbanded museum once part of the University of Southern California (U.S.C.). In 1966, these human remains were donated to LACNHM. The human remains (L.2397.66–1) consist of a mandible belonging to an adult of indeterminate sex. No associated funerary objects are present.

Human remains representing, at a minimum, two individuals were removed from Long Beach in Los Angeles County, CA. In 1953, U.S.C. and California State University, Long

Beach conducted a salvage excavation at LAN–270, a site located in the Los Altos neighborhood of Long Beach, under the direction of Dr. William J. Wallace. The human remains excavated by Wallace at Los Altos were transferred to the Laboratory of Anthropology of the Hancock Foundation, and in 1966, they were donated to LACNHM. These human remains consist of eight human vertebrae and two human carpals (L.2397.66–4) belonging of one individual and an almost complete skeleton (L.2397.66–12) belonging to an adult female. No associated funerary objects are present.

**Cultural Affiliation**

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes. The following types of information were used to reasonably trace the relationship: anthropological, archeological, biological, historical, and oral traditional.

The Acjachemen Nation, Gabrieleno Tribes and Tongva Tribes (''People of the Earth'') have strong cultural ties to Laguna Beach and Long Beach coastlines. The site of Puvungna, located on the California State University, Long Beach campus, is sacred to the Gabrieleno, Tongva, and Acjachemen for its association with their Creation account and Tribal history, and annual pilgrimages there by Gabrieleno, Tongva, and Acjachemen continue today. The Luiseño people, which include the Pechanga Band of Indians, share cultural practices and beliefs with the Gabrieleno, Tongva, and Acjachemen, and are linguistically related.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the LACNHM determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Pechanga Band of Indians (*Previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California).

**Requests for Repatriation**

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the LACNHM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The LACNHM is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26618 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0036999; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: University of Florida, Florida Museum of Natural History, Gainesville, FL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Florida, Florida Museum of Natural History (FLMNH) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Okaloosa County, FL.

**DATES:** Repatriation of the human remains in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Catherine Smith, University of Florida, Florida Museum of Natural History, 1659 Museum Road, Gainesville, FL 32611, telephone (352) 273–1921, email *smithcatherine@floridamuseum.ufl.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of FLMNH. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by FLMNH.

**Description**

Human remains representing, at minimum, three individuals were removed from Okaloosa County, FL. During the summer of 1977, FLMNH received ancestral remains, ceramics, and a few other items from a private donor whose father had collected them incrementally during fishing trips in the Fort Walton area during the 1920s and 1930s. No associated funerary objects are present.

**Cultural Affiliation**

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical and archeological.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, FLMNH has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Seminole Tribe of Florida.

**Requests for Repatriation**

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official

identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, FLMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. FLMNH is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26606 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037005; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined they are reasonably believed to be related to the lineal descendant in this notice. The human remains were collected at the Sherman Institute in Riverside County, CA.

**DATES:** Repatriation of the human remains in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

#### Description

Human remains representing, at minimum, one individual were collected at the Sherman Institute in Riverside County, CA. The human remains are hair clippings collected from Melvin Barney, an individual identified as ''Karok,'' who was recorded as being 17 years old. Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

#### Lineal Descent

The human remains in this notice are connected to an identifiable individual whose descendants can be traced directly and without interruption by means of a traditional kinship system or by the common law system of descendance.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Tanner Barney is a direct lineal descendant of the named individual whose human remains are described in this notice.

#### Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the lineal descendants, Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the lineal descendant identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26610 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037004; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Genoa Industrial Indian School in Nance County, NE.

**DATES:** Repatriation of the human remains in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

**Description**

Human remains representing, at minimum, one individual were collected at the Genoa Industrial Indian School in Nance County, NE. The human remains are hair clippings collected from an individual identified as ''Winnebago,'' who was recorded as being 21 years old. S. B. Davis took the hair clippings at the Sherman Institute between 1930 and 1933. Davis sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

**Cultural Affiliation**

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Winnebago Tribe of Nebraska.

**Requests for Repatriation**

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26609 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037011; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Maxey Museum, Whitman College, Walla Walla, WA AGENCY: National Park Service, Interior

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Maxey Museum, Whitman College has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Umatilla County, OR.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Libby Miller, Maxey Museum, Whitman College, 345 Boyer Avenue, Walla Walla, WA 99362, telephone: (509) 876–7327, email *millerem@whitman.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Maxey Museum, Whitman College. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Maxey Museum, Whitman College.

**Description**

On April 9, 1930, human remains representing, at minimum, one individual were removed from Umatilla County, OR, by Co. Bunnell, who donated them to Whitman College, where they were accessioned by Howard Brode, curator of the Museum. The four associated funerary objects are stone implements.

**Cultural Affiliation**

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological, geographical, historical, and expert opinion.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Maxey Museum, Whitman College has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The four objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Confederated Tribes of the Umatilla Indian Reservation.

**Requests for Repatriation**

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the Maxey Museum, Whitman College must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Maxey Museum, Whitman College is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26616 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037009; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion Amendment: Arizona State Museum, University of Arizona, Tucson, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; amendment.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Arizona State Museum, University of Arizona, has amended a Notice of Inventory Completion published in the **Federal Register** on October 17, 2018. This notice amends the minimum number of individuals and number of associated funerary objects in a collection removed from Graham and Pima Counties, AZ.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Cristin Lucas, Repatriation Coordinator, P.O. Box 210026, Arizona State Museum, University of Arizona, Tucson, AZ 85721, telephone (520) 626–0320, email *lucasc@arizona.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Arizona State Museum, University of Arizona. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Arizona State Museum, University of Arizona.

**Amendment**

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (83 FR 52508–52519, October 17, 2018). Repatriation of the items in the original Notice of Inventory Completion has not occurred. This notice amends the counts of the minimum number of individuals and the number of associated funerary objects listed in the original notice. Human remains representing, at minimum, two individuals are added to the inventory for Graham County, AZ. Also, 24 associated funerary objects are added to the inventory for three sites in Graham and Pima Counties, AZ.

From AZ AA:8:20(ASM) in Pima County, AZ, the 919 associated funerary objects (previously identified as 913 associated funerary objects) are five bone artifact fragments, 752 ceramic sherds, one lot consisting of charcoal, 124 flaked stone fragments, 12 flotation samples, one ground stone, eight pollen samples, one radiocarbon sample, 11 schist pieces, two shells, and two pendants.

From AZ AA:8:21(ASM) in Pima County, AZ, the 422 associated funerary objects (previously identified as 419 associated funerary objects) are five bone fragments, one ceramic jar, 333 ceramic sherds, one perforated sherd, 77 flaked stone fragments, three pollen samples, one stone, and one ground stone.

From AZ CC:3:46(ASM) in Graham County, AZ, the human remains of, at minimum, 11 individuals were removed (previously identified as the remains of nine individuals). The 24 associated funerary objects (previously identified as nine associated funerary objects) are one bone awl, one ceramic sherd, four flaked stone fragments, two pollen samples, two shell pendants, one stone biface, six projectile points, three lots consisting of faunal bones, one flotation sample, one ground stone, and two soil samples.

**Determinations (as Amended)**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Arizona State Museum, University of Arizona, has determined that:

- The human remains described in this amended notice represent the physical remains of 664 individuals of Native American ancestry.
- The 10,442 objects described in this amended notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Ak-Chin Indian Community; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

**Requests for Repatriation**

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the Arizona State Museum, University of Arizona, must determine the most

appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Arizona State Museum, University of Arizona, is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26614 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037000; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: University of Florida, Florida Museum of Natural History, Gainesville, FL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Florida, Florida Museum of Natural History (FLMNH) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Walton County, FL.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Catherine Smith, University of Florida, Florida Museum of Natural History, 1659 Museum Road, Gainesville, FL 32611, telephone (352) 273–1921, email *smithcatherine@floridamuseum.ufl.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of FLMNH. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by FLMNH.

#### Description

Human remains, representing, at minimum, one individual (an adult male) were removed from Walton County, FL. In January of 1968, Dan Sharon removed these ancestral remains from Eden Park 1 (8WL61), an oyster midden. Sharon subsequently donated them to FLMNH. During collections reorganization in 2003, these ancestral remains and the funerary objects associated with them were found and assigned new accession and catalog numbers. The 11 associated funerary objects are three ceramic sherds, three charred plant remains, and five oyster shell fragments.

#### Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, and historical.

#### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, FLMNH has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 11 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Seminole Tribe of Florida and The Choctaw Nation of Oklahoma.

#### Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, FLMNH must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. FLMNH is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26607 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037010; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: The University of Kansas, Lawrence, KS

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Kansas has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Geary, Riley, Pottawatomie, Wabaunsee, Shawnee, Jefferson, Douglas, Leavenworth, Johnson, and Wyandotte Counties, KS.

**DATES:** Repatriation of the human remains in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Dr. Thomas Torma, NAGPRA Program Manager, The University of Kansas, Office of Audit, Risk & Compliance, 1450 Jayhawk Boulevard, 351 Strong Hall, Lawrence, KS 66045, telephone (406) 850–2220, email *t-torma@ku.edu*.

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Kansas. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Kansas

### Description

Human remains representing, at minimum, 103 individuals were removed from Geary, Riley, Pottawatomie, Wabaunsee, Shawnee, Jefferson, Douglas, Leavenworth, Johnson, and Wyandotte Counties, KS. These human remains were removed from the banks and gravel bars of the Kansas River by amateurs who collected paleontological resources and apparently did not recognize the remains as human. In 1991, in response to the passage of NAGPRA, the University conducted a review of this collection. During that review, one individual was identified and transferred to the campus's Museum of Anthropology. In 1996, the University of Kansas conducted a review of the Natural History collection, and human remains of the additional individuals were transferred to the University's Museum of Anthropology. In 2002, the Museum of Anthropology was closed, and, in 2006, the archaeology collection which included the human remains was transferred to the Biodiversity Institute. No associated funerary objects are present.

### Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, geographical, and historical.

### Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Kansas has determined that:

- The human remains described in this notice represent the physical remains of 103 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Cheyenne and Arapaho Tribes, Oklahoma; Citizen Potawatomi Nation, Oklahoma; Delaware Tribe of Indians; Kaw Nation, Oklahoma; Nez Perce Tribe; Oglala Sioux Tribe; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Prairie Band Potawatomi Nation; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; The Osage Nation; and the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

### Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the University of Kansas must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The University of Kansas is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26615 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037006; PPWOCRADN0–PCU00RP14.R50000]**

## Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Department of the Interior, Office of Indian Affairs, Field Services in Kodiak Island Borough, AK.

**DATES:** Repatriation of the human remains in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

### Description

Human remains representing, at minimum, two individuals, were collected at the Department of the Interior, Office of Indian Affairs, Field Services site in Kodiak Island Borough, AK. The human remains are hair clippings collected from one individual recorded as 49 years old and one individual recorded as 16 years old, who were identified as ''Kodiak.'' Michael F. MacLeod took the hair clippings at the Department of the Interior, Office of Indian Affairs, Field Services site between 1930 and 1933. MacLeod sent the hair clippings to George Woodbury, who donated the hair

clippings to the PMAE in 1935. No associated funerary objects are present.

**Cultural Affiliation**

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Native Village of Afognak.

**Requests for Repatriation**

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26611 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0037002; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: University of Florida, Florida Museum of Natural History, Gainesville, FL, and Florida Department of State, Tallahassee, FL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Florida, Florida Museum of Natural History (FLMNH) and the Florida Department of State have completed an inventory of human remains and associated funerary objects and have determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Okaloosa County, FL.

**DATES:** Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 4, 2024.

**ADDRESSES:** Catherine Smith, University of Florida, Florida Museum of Natural History, 1659 Museum Road, Gainesville, FL 32611, telephone (352) 273–1921, email *smithcatherine@floridamuseum.ufl.edu (primary contact for this notice)* and Kathryn Miyar, Florida Department of State, 1001 DeSoto Park Drive. Tallahassee, FL 32301, telephone (850) 245–6319, email *kathryn.miyar@dos.myflorida.com.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of FLMNH and the Florida Department of State. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by FLMNH and the Florida Department of State.

**Description**

Both FLMNH and the Florida Department of State are jointly submitting this notice to facilitate the rejoining of split ancestral remains and associated funerary objects. Human remains representing, at minimum, 25 individuals (held across both institutions) were removed from Okaloosa County, FL. During the 1970s, several excavations were undertaken by the Fort Walton Indian Temple Mound Museum staff and volunteers. During 1971 and1972, the Fort Walton Indian Temple Mound Museum volunteers intermittently excavated portions of the mound thought to have held structures (based on post hole remnants). In 1973, a 5'x5' unit and two trenches were excavated by Lazarus and Fornaro, who supervised Fort Walton Indian Temple Mound Museum staff and volunteers. In 1975–1976, Thanz supervised Fort Walton Indian Temple Mound Museum staff and volunteers excavating units using a coordinate system. FLMNH holds the remains of 22 ancestors listed in this notice (Accession ANTH 81–24) and the Florida Department of State holds the remains of three ancestors (Accession 1992.123). The 3,790 associated funerary items (held across both institutions) include ceramics, a shell bead, charred plant remains, faunal remains (bones and shells), and lithics. FLMNH holds 3,711 associated funerary objects listed in this notice (Accession ANTH 2003–4) and the Florida Department of State holds 79 associated funerary objects (Accession 1992.123).

**Cultural Affiliation**

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, and historical.

**Determinations**

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, FLMNH and the Florida Department of State have determined that:

- The human remains described in this notice represent the physical

remains of 25 individuals of Native American ancestry.

- The 3,790 items described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Mississippi Band of Choctaw Indians; Seminole Tribe of Florida; and The Choctaw Nation of Oklahoma.

**Requests for Repatriation**

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES.** Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 4, 2024. If competing requests for repatriation are received, FLMNH and the Florida Department of State must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. FLMNH and the Florida Department of State are responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: November 28, 2023.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2023–26608 Filed 12–4–23; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1331]**

### Certain Outdoor and Semi-Outdoor Electronic Displays, Products Containing Same, and Components Thereof

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on November 13, 2023, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. On November 27, 2023, the ALJ issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

**FOR FURTHER INFORMATION CONTACT:** Paul Lall, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2043. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to outdoor and semi-outdoor electronic displays, products containing the same, and components thereof imported, sold for importation, and/or sold after importation by Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung SDS America, Inc., Industrial Enclosures Corporation d/b/a Palmer Digital Group, and Coates US Inc. (collectively, ''Respondents'') and cease and desist orders directed to Respondents. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation by December 11, 2023. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on December 27, 2023.

Persons filing written submissions must file the original document electronically on or before the deadlines

stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1331'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 29, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–26603 Filed 12–4–23; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–589 and 731–TA–1394–1396 (Review)]**

## Forged Steel Fittings From China, Italy, and Taiwan; Scheduling of Expedited Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty orders on forged steel fittings from China, Italy, and Taiwan and the countervailing duty order on forged steel fittings from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

**DATES:** November 6, 2023.

**FOR FURTHER INFORMATION CONTACT:** Alec Resch (202–708–1448), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On November 6, 2023, the Commission determined that the domestic interested party group response to its notice of institution (88 FR 50172, August 1, 2023) of the subject five-year reviews was adequate and that the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

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).

*Staff report.*—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on December 28, 2023. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before January 4, 2024 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by January 4, 2024. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 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

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the responses submitted on behalf of Bonney Forge Corporation, Phoenix Forge Group d/b/a Capitol Manufacturing Company, LLC, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the 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.

*Determination.*—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 Act; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 29, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023–26597 Filed 12–4–23; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Continuance of Compensation (CA–12)

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before January 4, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

*Comments are invited on:* (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This form is used to obtain information from eligible survivors receiving death benefits for an extended period of time. This information is necessary to ensure that compensation being paid is accurate. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 7, 2023 (88 FR 52213).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–OWCP.

*Title of Collection:* Claim for Continuance of Compensation (CA–12).

*OMB Control Number:* 1240–0015.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 2,894.

*Total Estimated Number of Responses:* 2,894.

*Total Estimated Annual Time Burden:* 241 hours.

*Total Estimated Annual Other Costs Burden:* $1,550.

(Authority: 44 U.S.C. 3507(a)(1)(D))

**Michelle Neary,**

*Senior PRA Analyst.*

[FR Doc. 2023–26587 Filed 12–4–23; 8:45 am]

**BILLING CODE 4510–CH–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Proposed Extension of Information Collection; Department of Labor Events Management Platform

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Office of the Assistant Secretary for Administration and Management (OASAM)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before February 5, 2024.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Nora Hernandez by telephone at 202–693–8633, or by email at *hernandez.nora@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The DOL periodically sponsors events that require advance registration by persons wishing to attend. This ICR seeks PRA clearance for the Department of Labor Events Management Platform. This information helps ensure that attendees

receive suitable accommodations (*e.g.,* a large enough room with enough seating) while attending the DOL event. In addition, the information will help the DOL keep track of the types of entities that attend agency events. Such information can assist when developing lists of stakeholders.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Type of Review:* Revision of a currently approved collection.

*Agency:* DOL–OASAM.

*Title of Collection:* Department of Labor Events Management Program.

*OMB Number:* 1225–0094.

*Affected Public:* Businesses or other for-profits, Not-for-profit institutions.

*Number of Respondents:* 6,020.

*Number of Responses:* 7,520.

*Annual Burden Hours:* 602 hours.

*Annual Respondent or Recordkeeper Cost:* $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

**Nora Hernandez,**

*Paperwork Reduction Act Departmental Clearance Officer.*

[FR Doc. 2023–26585 Filed 12–4–23; 8:45 am]

**BILLING CODE 4510–04–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### 30-Day Notice for the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery''

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice, request for comments, collection of information.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the National Endowment for the Arts (NEA) has requested that the Office of Management and Budget renew its generic clearance for the collection of qualitative feedback on agency service delivery. This generic clearance fast-tracks the process for NEA to seek feedback from the public, through surveys and similar feedback instruments, regarding NEA services and programs. Copies of this ICR, with applicable supporting documentation, may be obtained by visiting *www.Reginfo.gov.*

**DATES:** Written comments must be submitted to the office listed in the address section below within 30 days from the date of this publication in the **Federal Register**.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''National Endowment for the Arts'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, comments can be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

**SUPPLEMENTARY INFORMATION:** The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered is not used for the purpose of substantially informing influential policy decisions; and
- Information gathered yields qualitative information; the collections are not designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate,

methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

*Agency:* National Endowment for the Arts.

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*OMB Control Number:* 3135–0130.

*Current Actions:* Extension of a currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Individuals and households; businesses and organizations; State, local or Tribal government.

*Estimated Number of Respondents:* 3,209.

*Average Expected Annual Number of Activities:* 5.

*Average Number of Respondents per Activity:* 642.

*Annual Responses:* 3,209.

*Frequency of Response:* Once per request.

*Average minutes per response:* 11.

*Average Expected Annual Burden hours:* 598.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; 2. the accuracy of the Agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 30, 2023.

**RaShaunda Thomas,**

*Deputy Director, Office of Administrative Services & Contracts, National Endowment for the Arts.*

[FR Doc. 2023–26668 Filed 12–4–23; 8:45 am]

**BILLING CODE 7536–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Establish an Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

**DATES:** Written comments on this notice must be received by February 5, 2024, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

*Comments:* Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Systematics Scientists Community Survey.

*OMB Number:* 3145–NEW.

*Expiration Date of Approval:* Not applicable.

*Type of Request:* Intent to seek approval to establish information collection for better serving the systematics and biodiversity community of scientists.

*Abstract:* The Systematics and Biodiversity Science Cluster (SBS) of the Division of Environmental Biology (DEB) at the National Science Foundation (NSF) supports research and methods development that advances understanding of the diversity, systematics, distribution and evolutionary history of extant and extinct organisms. SBS has a longstanding commitment to support research and taxonomic capacity building across the breadth of life on earth.

SBS requests the Office of Management and Budget (OMB) approval to initiate a new survey that will capture the current state of systematic research in the U.S. across subdisciplines, taxonomic groups, and scientific training and ranks.

*Use of the Information:* Individual survey responses will not be identifiable to the respondent. Aggregate results from the survey will be analyzed and summarized for internal SBS use. The data collected and analyzed will be used for program planning, management, and evaluation purposes. Analyzed data in aggregate may be used in a white paper reporting on the state of systematics science in the U.S. These data are needed for effective administration, program monitoring, evaluation, and for strategic planning within SBS.

*Expected Respondents:* The respondents will be scientists that self-identify as systematists.

**Estimate of Burden**

*Estimates of Annualized Cost to Respondents for the Hour Burdens*

The overall annualized cost to the respondents is estimated to be $6,730. The following table shows the estimated burden and costs to respondents, who are generally biologists at the postsecondary level. This estimated hourly rate is based on a report from the Bureau of Labor Statistics' Occupational Employment and Wages, May 2021).[1] According to this report, the median hourly rate is $33.65.

[1] *https://www.bls.gov/oes/current/oes251021.htm.*

| Collection title | Total number of respondents | Burden hours per respondent | Total hour burden | Average hourly rate | Estimated cost |
|---|---|---|---|---|---|
| Survey of Systematists | 800 | .25 | 200 | $33.65 | $6,730 |
| Total | 800 | | 200 | | 6,730 |

**Estimated Number of Responses per Report**

Survey requests will be sent to members of all North American scientific societies to which systematists belong. The total number of systematists employed in the U.S. is not known but estimated that ca. 800 will respond.

Dated: November 29, 2023.

**Suzanne H. Plimpton,**

*Reports Clearance Officer, National Science Foundation.*

[FR Doc. 2023–26588 Filed 12–4–23; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2023–0141]**

## Information Collection: Pre-Application Communication and Scheduling for Licensing Actions Related to Digital Instrumentation and Controls

**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, ''Pre-Application Communication and Scheduling for Licensing Actions Related to Digital Instrumentation and Controls.''

**DATES:** Submit comments by February 5, 2024. 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–2023–0141. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* 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–2023–0141 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–2023–0141.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The supporting statement, Regulatory Issue Summary, and burden table are available in ADAMS under Accession Nos. ML23222A221, ML23198A062, and ML23254A061.
- *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–2023–0141, 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:* Pre-Application Communication and Scheduling for Licensing Actions Related to Digital Instrumentation and Controls.

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:* Annually, with the addition of voluntary updates as available.

6. *Who will be required or asked to respond:* All holders of operating licenses or combined licenses for nuclear power reactors, except those that have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel or combined license holders that have not received authorization to load nuclear fuel and begin operation.

7. *The estimated number of annual responses:* 4.33.

8. *The estimated number of annual respondents:* 4.33.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 87.

10. *Abstract:* Operating reactors in the U.S. want to more efficiently integrate and implement digital upgrades into plant systems to address obsolescence issues with analog components and improve overall plant reliability. The regulatory focus for digital systems is tailored to the unique nature of the digital technologies and uses proposed by licensees and applicants. Depending on the scope of an analog to digital or a digital-to-digital upgrade, the level-of-effort for a requested licensing actions (*e.g.,* license amendment, exemption) can be significantly higher than the level-of-effort expended on a routine requested licensing action. Additionally, a significant portion of the level-of-effort for a digital instrumentation and controls (I&C) review will require specialized digital I&C and human factors engineering skills. To better plan and ensure availability of resources to perform digital I&C reviews, the NRC is seeking scheduling information for licensing submittals from all respondents. This information will allow the NRC to better allocate its resources to support the activities associated with licensing these technologies while being better able to meet the licensee's desired timeline.

### 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: November 29, 2023.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2023–26589 Filed 12–4–23; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2024–83 and CP2024–85; MC2024–84 and CP2024–86; MC2024–85 and CP2024–87]**

## 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:* December 7, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

### II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–83 and CP2024–85; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 123 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 29, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* December 7, 2023.

2. *Docket No(s).:* MC2024–84 and CP2024–86; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 26 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 29, 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:* December 7, 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).

3. *Docket No(s).:* MC2024–85 and CP2024–87; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 114 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 29, 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:* December 7, 2023.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2023–26657 Filed 12–4–23; 8:45 am]

**BILLING CODE 7710–FW–P**

## RAILROAD RETIREMENT BOARD

### Sunshine Act Meetings

**TIME AND DATE:** 9 a.m., December 13, 2023.

**PLACE:** Members of the public wishing to attend the meeting must submit a written request at least 24 hours prior to the meeting to receive dial-in information. All requests must be sent to *SecretarytotheBoard@rrb.gov.*

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:** Office of Legislative Affairs Update.

**CONTACT PERSON FOR MORE INFORMATION:** Stephanie Hillyard, Secretary to the Board, (312) 751–4920

(Authority: 5 U.S.C. 552b)

Dated: December 1, 2023.

**Stephanie Hillyard,**

*Secretary to the Board.*

[FR Doc. 2023–26754 Filed 12–1–23; 11:15 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99035; File No. SR–CBOE–2023–062]**

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Short Term Option Series Program

November 29, 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 November 22, 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 as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] 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

The Exchange proposes to amend its Short Term Option Series Program. The text of the proposed rule change is available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 4.5(d). Specifically, the Exchange proposes to expand the Short Term Option Series Program to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (''USO''), United States Natural Gas Fund, LP (''UNG''), SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), and iShares 20+ Year Treasury Bond ETF (''TLT'') (collectively ''Exchange Traded Products'' or ''ETPs''). This is a competitive filing that is based on a proposal submitted by Nasdaq ISE, LLC (''Nasdaq ISE'') and recently approved by the Commission.[5]

Currently, as set forth in Rule 4.5(d), after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Friday Short Term Option Expiration Dates (''Short Term Option Weekly Expirations''). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of Rule 4.5(d) that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.

At this time, the Exchange proposes to expand the Short Term Option Daily Expirations to permit the listing and trading of options on USO, UNG, GLD, SLV, and TLT expiring on Wednesdays. The Exchange proposes to permit two Short Term Option Expiration Dates beyond the current week for each Wednesday expiration at one time.[6] In

[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* Securities Exchange Act Release No. 98905 (November 13, 2023) (SR–ISE–2023–11) (Order Approving a Proposed Rule Change to Amend the Short Term Option Series Program to Permit the Listing of Two Wednesday Expirations for Options on Certain Exchange Traded Products) (''Nasdaq ISE Approval'').

[6] Consistent with the current operation of the rule, the Exchange notes that if it adds a Wednesday expiration on a Tuesday, it could technically list three outstanding Wednesday expirations at one

Continued

order to effectuate the proposed changes, the Exchange would add USO, UNG, GLD, SLV, and TLT to Table 1 of Rule 4.5(d), which specifies each symbol that qualifies as a Short Term Option Daily Expiration.

The proposed Wednesday USO, UNG, GLD, SLV, and TLT expirations will be similar to the current Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations set forth in Rule 4.5(d), such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on USO, UNG, GLD, SLV, and TLT to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (''Wednesday USO Expirations,'' ''Wednesday UNG Expirations,'' ''Wednesday GLD Expirations,'' ''Wednesday SLV Expirations,'' and ''Wednesday TLT Expirations'') (collectively, ''Wednesday ETP Expirations'').[7] In the event Short Term Option Daily Expirations expire on a Wednesday and that Wednesday is the same day that a Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Wednesday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series.

USO, UNG, GLD, SLV, and TLT Friday expirations would continue to have a total of five Short Term Option Expiration Dates provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates'').

Similar to Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Rule 4.5(d), the Exchange proposes that it may open for trading on any Tuesday or Wednesday that is a business day series of options on USO, UNG, GLD, SLV, and TLT that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which Quarterly Options Series expire.

The interval between strike prices for the proposed Wednesday ETP Expirations will be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.[8] Specifically, the Wednesday ETP Expirations will have a strike interval of $0.50 or greater for strike prices below $100, $1 or greater for strike prices between $100 and $150, and $2.50 or greater for strike prices above $150.[9] As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series will be P.M.-settled.

Pursuant to Rule 4.5(d), with respect to the Short Term Option Series Program, a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[10] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[11] With the proposed changes, this thirty (30) series restriction would apply to Wednesday USO, UNG, GLD, SLV, and TLT Short Term Option Daily Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list Wednesday ETP Expirations.

With this proposal, Wednesday ETP Expirations would be treated similarly to existing Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Wednesday ETP Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Wednesday ETP Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Wednesday ETP Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Wednesday for SPY, QQQ and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Wednesday for SPY, QQQ and IWM.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] 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.

Similar to Wednesday expirations in SPY, QQQ, and IWM, the proposal to permit Wednesday ETP Expirations, subject to the proposed limitation of two expirations beyond the current week, would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying

time. The Exchange will therefore clarify the rule text in Rule 4.5(d) to specify that it can list two Short Term Option Expiration Dates *beyond the current week* for each Monday, Tuesday, Wednesday, and Thursday expiration.

[7] While the relevant rule text in Rule 4.5(d) also indicates that the Exchange will not list such expirations on a Wednesday that is a business day in which monthly options series expire, practically speaking this would not occur.

[8] *See* Rule 4.5(d)(5).

[9] *Id.*

[10] *See* Rule 4.5(d)(1).

[11] *Id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

portfolio protection, thus allowing them to better manage their risk exposure.

The Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Series for Wednesday SPY, QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for GLD, SLV, USO, UNG, and TLT given that it will be limited to two Wednesday expirations beyond the current week. Lastly, the Exchange believes its proposal will not be a strain on liquidity provides because of the multi-class nature of GLD, SLV, USO, UNG, and TLT and the available hedges in highly correlated instruments, as described above.

The Exchange believes that the proposal is consistent with the Act as the proposal would overall add a small number of Wednesday ETP Expirations by limiting the addition of two Wednesday expirations beyond the current week. The addition of Wednesday ETP Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve market quality. The Exchange believes that the proposal will allow market participants to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively, thus allowing them to better manage their risk exposure. Today, the Exchange lists Wednesday SPY, QQQ, and IWM Expirations.[14]

The Exchange believes the Short Term Option Series Program has been successful to date and that Wednesday ETP Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. There are no material differences in the treatment of Wednesday SPY, QQQ and IWM expirations compared to the proposed Wednesday ETP Expirations. Given the similarities between Wednesday SPY, QQQ and IWM expirations and the proposed Wednesday ETP Expirations, the Exchange believes that applying the provisions in Rule 4.5(d) that currently apply to Wednesday SPY, QQQ and IWM expirations is justified. For example, the Exchange believes that allowing Wednesday ETP Expirations and monthly ETP expirations in the same week will benefit investors and minimize investor confusion by providing Wednesday ETP Expirations in a continuous and uniform manner.

*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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[15]

While the proposal will expand the Short Term Options Expirations to allow Wednesday ETP Expirations to be listed on the Exchange, the Exchange believes that this limited expansion for Wednesday expirations for options on USO, UNG, GLD, SLV, and TLT will not impose an undue burden on competition; rather, it will meet customer demand. The Exchange believes that market participants will continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT given multi-class nature of these products and the available hedges in highly correlated instruments, as described above. Similar to Wednesday SPY, QQQ and IWM expirations, the introduction of Wednesday ETP Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Wednesday ETP Expirations. Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant

[14] *See* Rule 4.5(d).

[15] *See* Nasdaq ISE Approval.

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change is a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[22] The Exchange has stated that waiver of the 30-day operative delay would ensure fair competition among the exchanges by allowing the Exchange to permit the listing of two Wednesday expirations for options on ETPs. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2023–062 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–2023–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2023–062 and should be submitted on or before December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–26592 Filed 12–4–23; 8:45 am]

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[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] *See supra* note 5.

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12), (59).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99037; File No. SR–CboeEDGX–2023–071]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Short Term Option Series Program

November 29, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 22, 2023, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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 as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] 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

The Exchange proposes to amend its Short Term Option Series Program.

The text of the proposed rule change is available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 19.6, Interpretation and Policy .05. Specifically, the Exchange proposes to expand the Short Term Option Series Program to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (''USO''), United States Natural Gas Fund, LP (''UNG''), SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), and iShares 20+ Year Treasury Bond ETF

[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).

(''TLT'') (collectively ''Exchange Traded Products'' or ''ETPs''). This is a competitive filing that is based on a proposal submitted by Nasdaq ISE, LLC (''Nasdaq ISE'') and recently approved by the Commission.[5]

Currently, as set forth in Rule 19.6, Interpretation and Policy .05, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Friday Short Term Option Expiration Dates (''Short Term Option Weekly Expirations''). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of Rule 19.6, Interpretation and Policy .05(h) that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.

At this time, the Exchange proposes to expand the Short Term Option Daily Expirations to permit the listing and trading of options on USO, UNG, GLD, SLV, and TLT expiring on Wednesdays. The Exchange proposes to permit two Short Term Option Expiration Dates beyond the current week for each Wednesday expiration at one time.[6] In order to effectuate the proposed changes, the Exchange would add USO, UNG, GLD, SLV, and TLT to Table 1 of Rule 19.6, Interpretation and Policy .05(h), which specifies each symbol that qualifies as a Short Term Option Daily Expiration.

The proposed Wednesday USO, UNG, GLD, SLV, and TLT expirations will be similar to the current Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations set forth in Rule 19.6, Interpretation and Policy .05, such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on USO, UNG, GLD, SLV, and TLT to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (''Wednesday USO Expirations,'' ''Wednesday UNG Expirations,'' ''Wednesday GLD Expirations,'' ''Wednesday SLV Expirations,'' and ''Wednesday TLT Expirations'') (collectively, ''Wednesday ETP Expirations'').[7] In the event Short Term Option Daily Expirations expire on a Wednesday and that Wednesday is the same day that a Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Wednesday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series.

USO, UNG, GLD, SLV, and TLT Friday expirations would continue to have a total of five Short Term Option Expiration Dates provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates'').

Similar to Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Rule 19.6, Interpretation and Policy .05(h), the Exchange proposes that it may open for trading on any Tuesday or Wednesday that is a business day series of options on USO, UNG, GLD, SLV, and TLT that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which Quarterly Options Series expire.

The interval between strike prices for the proposed Wednesday ETP Expirations will be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.[8] Specifically, the Wednesday ETP Expirations will have a strike interval of $0.50 or greater for strike prices below $100, $1 or greater for strike prices between $100 and $150, and $2.50 or greater for strike prices above $150.[9] As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series will be P.M.-settled.

Pursuant to Rule 19.6, Interpretation and Policy .05(h), with respect to the Short Term Option Series Program, a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[10] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[11] With the proposed changes, this thirty (30) series restriction would apply to Wednesday USO, UNG, GLD, SLV, and TLT Short Term Option Daily Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list Wednesday ETP Expirations.

With this proposal, Wednesday ETP Expirations would be treated similarly to existing Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a

[5] *See* Securities Exchange Act Release No. 98905 (November 13, 2023) (SR–ISE–2023–11) (Order Approving a Proposed Rule Change to Amend the Short Term Option Series Program to Permit the Listing of Two Wednesday Expirations for Options on Certain Exchange Traded Products) (''Nasdaq ISE Approval'').

[6] Consistent with the current operation of the rule, the Exchange notes that if it adds a Wednesday expiration on a Tuesday, it could technically list three outstanding Wednesday expirations at one time. The Exchange will therefore clarify the rule text in Rule 19.6, Interpretation and Policy .05(h) to specify that it can list two Short Term Option Expiration Dates *beyond the current week* for each Monday, Tuesday, Wednesday, and Thursday expiration.

[7] While the relevant rule text in Rule 19.6, Interpretation and Policy .05(h) also indicates that the Exchange will not list such expirations on a Wednesday that is a business day in which monthly options series expire, practically speaking this would not occur.

[8] *See* Rule 19.6, Interpretation and Policy .05(e).

[9] *Id.*

[10] *See* Rule 19.6, Interpretation and Policy .05(a).

[11] *Id.*

monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Wednesday ETP Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Wednesday ETP Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Wednesday ETP Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Wednesday for SPY, QQQ and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Wednesday for SPY, QQQ and IWM.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] 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.

Similar to Wednesday expirations in SPY, QQQ, and IWM, the proposal to permit Wednesday ETP Expirations, subject to the proposed limitation of two expirations beyond the current week, would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying portfolio protection, thus allowing them to better manage their risk exposure.

The Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Series for Wednesday SPY, QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for GLD, SLV, USO, UNG, and TLT given that it will be limited to two Wednesday expirations beyond the current week. Lastly, the Exchange believes its proposal will not be a strain on liquidity provides because of the multi-class nature of GLD, SLV, USO, UNG, and TLT and the available hedges in highly correlated instruments, as described above.

The Exchange believes that the proposal is consistent with the Act as the proposal would overall add a small number of Wednesday ETP Expirations by limiting the addition of two Wednesday expirations beyond the current week. The addition of Wednesday ETP Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve market quality. The Exchange believes that the proposal will allow market participants to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively, thus allowing them to better manage their risk exposure. Today, the Exchange lists Wednesday SPY, QQQ, and IWM Expirations.[14]

The Exchange believes the Short Term Option Series Program has been successful to date and that Wednesday ETP Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. There are no material differences in the treatment of Wednesday SPY, QQQ and IWM expirations compared to the proposed Wednesday ETP Expirations. Given the similarities between Wednesday SPY, QQQ and IWM expirations and the proposed Wednesday ETP Expirations, the Exchange believes that applying the provisions in Rule 19.6, Interpretation and Policy .05(h) that currently apply to Wednesday SPY, QQQ and IWM expirations is justified. For example, the Exchange believes that allowing Wednesday ETP Expirations and monthly ETP expirations in the same week will benefit investors and minimize investor confusion by providing Wednesday ETP Expirations in a continuous and uniform manner.

*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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[15]

While the proposal will expand the Short Term Options Expirations to allow Wednesday ETP Expirations to be listed on the Exchange, the Exchange believes that this limited expansion for Wednesday expirations for options on USO, UNG, GLD, SLV, and TLT will not impose an undue burden on competition; rather, it will meet customer demand. The Exchange believes that market participants will continue to be able to expand hedging tools and tailor their investment and

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Rule 19.6, Interpretation and Policy .05(h).

[15] *See* Nasdaq ISE Approval.

hedging needs more effectively in USO, UNG, GLD, SLV, and TLT given multi-class nature of these products and the available hedges in highly correlated instruments, as described above. Similar to Wednesday SPY, QQQ and IWM expirations, the introduction of Wednesday ETP Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Wednesday ETP Expirations. Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change is a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[22] The Exchange has stated that waiver of the 30-day operative delay would ensure fair competition among the exchanges by allowing the Exchange to permit the listing of two Wednesday expirations for options on ETPs. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2023–071 on the subject line.

*Paper Comments*

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

All submissions should refer to file number SR–CboeEDGX–2023–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2023–071 and should be submitted on or before December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Sherry R. Haywood,**

*Assistant Secretary.*

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[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] *See supra* note 5.

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12), (59).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99040; File No. SR–MIAX–2023–47]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 29, 2023.

Pursuant to the provisions of 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 November 20, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Options Exchange Fee Schedule (the ''Fee Schedule'') to extend the SPIKES Options Market Maker Incentive Program (the ''Incentive Program'') until March 31, 2024.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to extend the Incentive Program until March 31, 2024.

On September 30, 2021, the Exchange filed its initial proposal to implement a SPIKES Options Market Maker Incentive Program for SPIKES options to incentivize Market Makers [3] to improve liquidity, available volume, and the quote spread width of SPIKES options beginning October 1, 2021, and ending December 31, 2021.[4] Technical details regarding the Incentive Program were published in a Regulatory Circular on September 30, 2021.[5] On October 12, 2021, the Exchange withdrew SR–MIAX–2021–45 and refiled its proposal to implement the Incentive Program to provide additional details.[6] In that filing, the Exchange specifically noted that the Incentive Program would expire at the end of the period (December 31, 2021) unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[7]

Between December 23, 2021, and July 12, 2023, the Exchange filed several proposals to extend the Incentive Program, with the last extension period ending December 31, 2023.[8] In each of those filings, the Exchange specifically noted that the Incentive Program would expire at the end of the then-current period unless the Exchange filed another 19b–4 Filing to amend the fees (or extend the Incentive Program).[9]

[3] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] *See* SR–MIAX–2021–45.

[5] *See* MIAX Options Regulatory Circular 2021–56, SPIKES Options Market Maker Incentive Program (September 30, 2021) *available at https://www.miaxglobal.com/sites/default/files/circular-files/MIAX_Options_RC_2021_56.pdf.*

[6] *See* Securities Exchange Act Release No. 93424 (October 26, 2021), 86 FR 60322 (November 1, 2021) (SR–MIAX–2021–49).

[7] *See id.*

[8] *See* Securities Exchange Act Release Nos. 93881 (December 30, 2021), 87 FR 517 (January 5, 2022) (SR–MIAX–2021–63); 94574 (April 1, 2022), 87 FR 20492 (April 7, 2022) (SR–MIAX–2022–12); 95259 (July 12, 2022), 87 FR 42754 (July 17, 2022) (SR–MIAX–2022–24); 96007 (October 7, 2022), 87 FR 62151 (October 13, 2022) (SR–MIAX–2022–32); 96588 (December 28, 2022), 88 FR 381 (January 4, 2023) (SR–MIAX–2022–47); 97239 (April 3, 2023), 88 FR 20930 (April 7, 2023) (SR–MIAX–2023–13); and 97883 (July 12, 2023), 88 FR 45941 (July 18, 2023) (SR–MIAX–2023–26).

[9] *See id.*

The Exchange now proposes to extend the Incentive Program until March 31, 2024.[10]

The Exchange proposes to extend the Incentive Program for SPIKES options to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. Currently, to be eligible to participate in the Incentive Program, a Market Maker must meet certain minimum requirements related to quote spread width in certain in-the-money (ITM) and out-of-the-money (OTM) options as determined by the Exchange and communicated to Members via Regulatory Circular.[11] Market Makers must also satisfy a minimum time in the market in the front 2 expiry months of 70%, and have an average quote size of 25 contracts. The Exchange established two separate incentive compensation pools that are used to compensate Market Makers that satisfy the criteria pursuant to the Incentive Program.

The first pool (Incentive 1) has a total amount of $40,000 per month, which is allocated to Market Makers that meet the minimum requirements of the Incentive Program. Market Makers are required to meet minimum spread width requirements in a select number of ITM and OTM SPIKES option contracts as determined by the Exchange and communicated to Members via Regulatory Circular.[12] A complete description of how the Exchange calculates the minimum spread width requirements in ITM and OTM SPIKES options can be found in the published Regulatory Circular.[13] Market Makers are also required to maintain the minimum spread width, described above, for at least 70% of the time in the front two (2) SPIKES options contract expiry months and maintain an average quote size of at least 25 SPIKES options contracts. The amount available to each individual Market Maker is capped at $10,000 per month for satisfying the minimum requirements of the Incentive Program. In the event that more than four Market Makers meet the requirements of the Incentive Program, each qualifying Market Maker is entitled to receive a pro-rated share of the $40,000 monthly compensation pool dependent upon the number of qualifying Market Makers in that particular month.

The second pool (Incentive 2 Pool) is capped at a total amount of $100,000

[10] The Exchange notes that at the end of the extension period, the Incentive Program will expire unless the Exchange files another 19b–4 Filing to amend the terms or extend the Incentive Program.

[11] *See supra* note 5.

[12] *See id.*

[13] *See id.*

per month which is used during the Incentive Program to further incentivize Market Makers who meet or exceed the requirements of Incentive 1 (''qualifying Market Makers'') to provide tighter quote width spreads. The Exchange ranks each qualifying Market Maker's quote width spread relative to each other qualifying Market Maker's quote width spread. Market Makers with tighter spreads in certain strikes, as determined by the Exchange and communicated to Members via Regulatory Circular,[14] are eligible to receive a pro-rated share of the compensation pool as calculated by the Exchange and communicated to Members via Regulatory Circular,[15] not to exceed $25,000 per Member per month. Qualifying Market Makers are ranked relative to each other based on the quality of their spread width (*i.e.,* tighter spreads are ranked higher than wider spreads) and the Market Maker with the best quality spread width receives the highest rebate, while other eligible qualifying Market Makers receive a rebate relative to their quality spread width.

The Exchange proposes to extend the Incentive Program until March 31, 2024. The Exchange does not propose to make any amendments to how it calculates any of the incentives provided for in Incentive Pools 1 or 2. The details of the Incentive Program can continue to be found in the Regulatory Circular that was published on September 30, 2021, to all Exchange Members.[16] The purpose of this extension is to continue to incentivize Market Makers to improve liquidity, available volume, and the quote spread width of SPIKES options. The Exchange will announce the extension of the Incentive Program to all Members via a Regulatory Circular.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with section 6(b) of the Act [17] in general, and furthers the objectives of section 6(b)(4) of the Act [18] in particular, in that it is an equitable allocation of reasonable fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to extend the Incentive Program for Market Makers in SPIKES options until March 31, 2024. The Incentive Program is reasonably designed because it will continue to incentivize Market Makers to provide quotes and increased liquidity in select SPIKES options contracts. The Incentive Program is reasonable, equitably allocated and not unfairly discriminatory because all Market Makers in SPIKES options may continue to qualify for Incentive 1 and Incentive 2, dependent upon each Market Maker's quoting in SPIKES options in a particular month. Additionally, if a SPIKES Market Maker does not satisfy the requirements of Incentive Pool 1 or 2, then it simply will not receive the rebate offered by the Incentive Program for that month.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to continue to offer this financial incentive to SPIKES Market Makers because it will continue to benefit all market participants trading in SPIKES options. SPIKES options is a Proprietary Product on the Exchange and the continuation of the Incentive Program encourages SPIKES Market Makers to satisfy a heightened quoting standard, average quote size, and time in market. A continued increase in quoting activity and tighter quotes may yield a corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing greater execution incentives and opportunities, while promoting market transparency and improving investor protection.

The Exchange believes that the Incentive Program is equitable and not unfairly discriminatory because it will continue to promote an increase in SPIKES options liquidity, which may facilitate tighter spreads and an increase in trading opportunities to the benefit of all market participants. The Exchange believes it is reasonable to operate the Incentive Program for a continued limited period of time to strengthen market quality for all market participants. The resulting increased volume and liquidity will benefit those Members who are eligible to participate in the Incentive Program and will also continue to benefit those Members who are not eligible to participate in the Incentive Program by providing more trading opportunities and tighter spreads.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes that the proposed extension of the Incentive Program to March 31, 2024, would continue to increase intra-market competition by incentivizing Market Makers to quote SPIKES options, which will continue to enhance the quality of quoting and increase the volume of contracts available to trade in SPIKES options. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity for SPIKES options. Enhanced market quality and increased transaction volume in SPIKES options that results from the anticipated increase in Market Maker activity on the Exchange will benefit all market participants and improve competition on the Exchange.

Inter-Market Competition

The Exchange does not believe that the proposed rule changes will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed extension of the Incentive Program applies only to the Market Makers in SPIKES Options, which are traded exclusively on the Exchange.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[19] and Rule 19b–4(f)(2) [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2023–47 on the subject line.

*Paper Comments*

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

All submissions should refer to file number SR–MIAX–2023–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–47 and should be submitted on or before December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–26595 Filed 12–4–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99041; File No. SR–MIAX–2023–45]**

## Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 517, Quote Types Defined

November 29, 2023.

Pursuant to the provisions of 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 November 16, 2023, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 517, Quote Types Defined.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, 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 Rule 517, Quote Types Defined. Specifically, the Exchange proposes to adopt new Interpretations and Policies .02 to Rule 517 to adopt new risk protection behavior for replacement Standard quotes [3] that are rejected.

Background

Market Makers [4] on the Exchange have heightened obligations separate from other market participants. Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids [5] or offers [6] or enter into transactions that are inconsistent with such a course of dealings.[7] A quotation may only be entered by a Market Maker, and only in the options classes to which the Market Maker is appointed under Rule 602.[8] A Market Maker's bid and offer for a series of option contracts shall state a price accompanied by the number of contracts at that price the Market Maker is willing to buy or sell upon receipt of an order or upon interaction with a quotation entered by another Market Maker on the Exchange.[9] Additionally, a Market Maker that enters a bid (offer) on the Exchange must enter an offer (bid) within the spread allowable under Rule 603(b)(4).[10]

The Exchange has three classes of Market Makers; Primary Lead Market Makers, Lead Market Makers, and Registered Market Makers.[11] Further, each class of Market Maker has its own

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Standard quote is a quote submitted by a Market Maker that cancels and replaces the Market Maker's previous Standard quote, if any. *See* Exchange Rule 517(a)(1).

[4] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[5] The term ''bid'' means a limit order or quote to buy one or more option contracts. *See* Exchange Rule 100.

[6] The term ''offer'' means a limit order or quote to sell one or more option contracts. *See* Exchange Rule 100.

[7] *See* Exchange Rule 603(a).

[8] *See* Exchange Rule 604(a).

[9] *See* Exchange Rule 604(b).

[10] *See* Exchange Rule 604(c).

[11] *See supra* note 4.

separate and distinct quoting obligations. A Primary Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes,[12] which for the purpose of paragraph (e)(1)(i) of Rule 604 shall mean 90% of the time, for the options classes to which it is appointed.[13] A Primary Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes in at least the lesser of 99% of the non-adjusted option series, or 100% of the non-adjusted option series minus one put-call pair, in each class in which the Primary Lead Market Maker is assigned.[14] A Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes, which for the purpose of paragraph (e)(2)(i) of Rule 604 shall mean 90% of the time, for the options classes to which it is appointed.[15] A Lead Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes in at least 90% of the non-adjusted option series in each of its appointed classes. Such quotations must meet the bid/ask differential requirements of Rule 603(b)(4).[16] A Registered Market Maker must provide continuous two-sided Standard quotes and/or Day eQuotes throughout the trading day in 60% of the non-adjusted series that have a time to expiration of less than nine months in each of its appointed classes. For the purpose of paragraph (e)(3)(i) of Rule 604, continuous two-sided quoting shall mean 90% of the time, for the options classes to which the Registered Market Maker is appointed.[17]

The Exchange offers several features to Market Makers designed to mitigate potential risks unique to Market Makers given their obligations on the Exchange. For example, the Exchange offers an Aggregate Risk Manager (''ARM'') protection which provides that the MIAX System [18] will maintain a counting program (''counting program'') for each Market Maker who is required to submit continuous two-sided quotations pursuant to Rule 604 in each of their appointed option classes.[19] The System will engage the Aggregate Risk Manager in a particular option class when the counting program has determined that a Market Maker has traded during the specified time period a number of contracts equal to or above their Allowable Engagement Percentage. The Aggregate Risk Manager will then automatically remove the Market Maker's Standard quotations and Day eQuotes from the Exchange's disseminated quotation in all series of that particular option class until the Market Maker sends a notification to the System of the intent to reengage quoting and submits a new revised quotation.[20]

Additionally, the Exchange offers Market Makers Single Side Protection (''SSP'') functionality which provides that, if the full remaining size of a Market Maker's complex Standard quote or cIOC eQuote in a strategy is exhausted by a trade, the System will trigger the SSP for the traded side of the strategy. When triggered, the System will cancel all complex Standard quotes and block all new inbound complex Standard quotes and cIOC eQuotes for that particular side of that strategy for that MPID.[21]

Proposal

The Exchange now proposes to cancel a Market Maker's Standard quote in certain scenarios when a replacement Standard quote submitted by the Market Maker is rejected. Specifically, the Exchange proposes to adopt new Policy .02 to Exchange Rule 517 which will provide that a replacement Standard quote that is rejected for a technical reason (as described below) will still cancel the target Standard quote.

A Standard quote is submitted by the Market Maker to the Exchange using the MIAX Express Interface (''MEI''). MEI is a messaging interface that MIAX members that are approved as Market Makers use to submit quotes for trading on the MIAX Options market. Market Makers are only allowed to submit quotes in the products of underlying instruments to which they are assigned.[22] Each message submitted to the Exchange via the MEI must pass a number of validity checks that are performed by the System. These include, but are not limited to, price and size checks. Specifically, Standard quote prices must not (i) be less than zero; (ii) exceed the maximum price; and (iii) must comply with the minimum trade increment [23] for that class.[24] Additionally, Standard quote sizes must not be less than zero and must not be less than the minimum quote size as defined in Rule 604(b)(2).[25] Collectively, these requirements constitute the technical reasons for which a replacement Standard quote may be rejected, but which will still result in the cancellation of the target Standard quote under the Exchange's proposal.

The Exchange believes that removing the Standard quote that the Market Maker was attempting to alter promotes the quality of the Exchange's market as removing a Standard quote that was targeted for replacement but was not replaced due to a technical reason maintains the integrity of quotes available in the market by ensuring that all available quotes accurately represent Market Maker interest.

When a Market Maker's replacement Standard quote is rejected because of a technical reason the existing Standard quote will be cancelled by the Exchange. In addition to maintaining the integrity of the Exchange's market, the Exchange believes this functionality also provides an additional level of risk protection to Market Makers that are attempting to replace an existing Standard quote but are unable to as a result of a technical reason with the replacement Standard quote.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with

[12] A Day eQuote is a quote submitted by a Market Maker that does not automatically cancel or replace the Market Maker's previous Standard quote or eQuote. Day eQuotes will expire at the close of trading each trading day. *See* Exchange Rule 517(a)(2)(i). An eQuote is a quote with a specific time in force that does not automatically cancel and replace a previous Standard quote or eQuote. An eQuote can be cancelled by the Market Maker at any time, or can be replaced by another eQuote that contains specific instructions to cancel an existing eQuote. *See* Exchange Rule 517(a)(2).

[13] *See* Exchange Rule 604(e)(1)(i).

[14] *See* Exchange Rule 604(e)(1)(ii).

[15] *See* Exchange Rule 604(e)(2)(i).

[16] *See* Exchange Rule 604(e)(2)(ii).

[17] *See* Exchange Rule 604(e)(3)(i).

[18] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[19] *See* Exchange Rule 612.

[20] *See* Exchange Rule 612(b)(1).

[21] *See* Exchange Rule 532(b)(8).

[22] *See* MIAX Express Interface for Quoting and Trading Options, MEI Interface Specification, version 2.9c (8/1/2022), available at: *https://www.miaxglobal.com/markets/us-options/miax-options/interface-specifications.*

[23] The price of Market Maker quotes shall be in the minimum trading increments applicable to the security under Rule 510; provided that, with respect to any security designated by the Exchange as available for non-displayed penny orders under Rule 516(b)(2), Market Maker quotes may be in one-cent increments. In such designated securities, quotes entered in one-cent increments will be firm as provided in paragraph (d) of Rule 604, but shall only be displayed to Members and the public at the Minimum Price Variation (MPV) for the security. The displayed price of such quotes will be the closest MPV that is higher for offers and the closest MPV that is lower for bids. *See* Exchange Rule 604(b)(1).

[24] The terms ''class of options'' or ''option class'' mean all option contracts covering the same underlying security. *See* Exchange Rule 100.

[25] Exchange Rule 604(b)(2) provides that, the initial size of a Market Maker incoming Standard Quote, Day eQuote and all other types of eQuotes must be for the minimum number of contracts, which minimum number shall be at least one (1) contract. The minimum number of contracts, which can vary according to type of quote or eQuote, shall be at least one (1) contract, will be determined by the Exchange on a class-by-class basis and announced to the Members through a Regulatory Circular.

the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[26] Specifically, the Exchange believes that its proposed rule change is consistent with section 6(b)(5)[27] requirements in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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)[28] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as the proposed rule will be uniformly applied to all Standard quote messages submitted by Market Makers on the Exchange.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as removing a Market Maker's Standard quote that the Market Maker has targeted for replacement, but failed to replace due to a technical reason with the replacement Standard quote message, promotes the quality of the Exchange's market by ensuring that all available quotes accurately represent Market Maker interest. When a Market Maker enters a replacement Standard quote a Market Maker has an expectation that the existing Standard quote will be cancelled, currently the existing Standard quote that the Market Maker intended to cancel may be executed if the replacement Standard quote is rejected which is contrary to the Market Maker's intent.

*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 its proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Market Makers of the Exchange and all Market Makers that submit a replacement Standard quote that is rejected as a result of a technical reason will have the existing target Standard quote removed by the Exchange.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition, as the Exchange's proposal is not a competitive filing. Rather the Exchange believes that its proposal may promote inter-market competition, as the Exchange's proposal will improve market quality on the Exchange which may improve competition for orders across all exchanges.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[29] and subparagraph (f)(6) of Rule 19b–4 thereunder.[30]

A proposed rule change filed under Rule 19b–4(f)(6)[31] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[32] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange requested the waiver because it would ensure the integrity of quotes available in the market. The Exchange stated that the Exchange provides risk protection functionality specifically for Market Makers due to the heightened obligations that Market Makers have on the Exchange and that the proposed rule change would ensure that the quotes available in the marketplace accurately represent Market Maker interest. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2023–45 on the subject line.

*Paper Comments*

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

All submissions should refer to file number SR–MIAX–2023–45. 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

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

[28] *See id.*

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[31] 17 CFR 240.19b–4(f)(6).

[32] 17 CFR 240.19b–4(f)(6)(iii).

[33] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2023–45 and should be submitted on or before December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–26596 Filed 12–4–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99034; File No. SR–PEARL–2023–66]**

## Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading To Adopt New Interpretations and Policies .12

November 29, 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 November 24, 2023, MIAX PEARL LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Interpretations and Policies .12 to Rule 404, Series of Option Contracts Open for Trading, to adopt a new strike interval program.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings,* at MIAX Pearl's principal office, 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 Rule 404, Series of Option Contracts Open for Trading. Specifically, the Exchange proposes to adopt new Interpretations and Policies .12 to Rule 404 to implement a new strike interval program for stocks that are priced less than $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange also proposes to amend the table in Interpretations and Policies .11 of Rule 404 to harmonize the table to the propose change.

Background

Currently, Exchange Rule 404, Series of Option Contracts Open for Trading, describes the process and procedures for listing and trading series of options [3] on the Exchange. Rule 404 provides for a $2.50 Strike Price Program, where the Exchange may select up to 60 option classes [4] on individual stocks for which the interval of strike prices will be $2.50 where the strike price is greater than $25.00 but less than $50.00.[5] Rule 404 also provides for a $1 Strike Price Interval Program, where the interval between strike prices of series of options [6] on individual stocks may be $1.00 or greater provided the strike price is $50.00 or less, but not less than $1.00.[7] Additionally, Rule 404 provides for a $0.50 Strike Program.[8] The interval of strike prices of series of options on individual stocks may be $0.50 or greater beginning at $0.50 where the strike price is $5.50 or less, but only for options classes whose underlying security closed at or below $5.00 in its primary market on the previous trading day and which have national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months. The listing of $0.50 strike prices is limited to options classes overlying no more than 20 individual stocks (the ''$0.50 Strike Program'') as specifically designated by the Exchange. The Exchange may list $0.50 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $0.50 Strike Program under their respective rules. A stock shall remain in the $0.50 Strike Program until otherwise designated by the Exchange.[9]

Proposal

At this time, the Exchange proposes to adopt a new strike interval program for underlying stocks that are not in the aforementioned $0.50 Strike Program (or the Short Term Option Series Program) [10] and that close below $2.50 and have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The $0.50 Strike Program considers stocks that have a closing price at or below $5.00 whereas the Exchange's proposal will consider stocks that have a closing price below $2.50. Currently, there is a subset of stocks that are not included in the $0.50 Strike Program as a result of the

[34] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''option contract'' means a put or a call issued, or subject to issuance, by the Clearing Corporation pursuant to the Rules of the Clearing Corporation. *See* Exchange Rule 100.

[4] The terms ''class of options'' or ''option class'' means all option contracts covering the same underlying security. *See* Exchange Rule 100.

[5] *See* Exchange Rule 404(f).

[6] The term ''series of options'' means all option contracts of the same class having the same exercise price and expiration date. *See* Exchange Rule 100.

[7] *See* Interpretations and Policies .01(a) of Rule 404.

[8] *See* Interpretations and Policies .04 of Rule 404.

[9] *Id.*

[10] *See* Interpretations and Policies .02 of Rule 404.

limitations of that program which provides that the listing of $0.50 strike prices shall be limited to option classes overlying no more than 20 individual stocks as specifically designated by the Exchange and requires a national average daily volume that equals or exceeds 1,000 contracts per day as determined by The Options Clearing Corporation during the preceding three calendar months.[11] Therefore, the Exchange is proposing to implement a new strike interval program termed the ''Low Priced Stock Strike Price Interval Program.'' The Exchange notes that this proposal is substantively identical to a proposal recently approved on the Exchange's affiliate, MIAX Options Exchange.[12]

To be eligible for the inclusion in the Low Priced Stock Strike Price Interval Program, an underlying stock must (i) close below $2.50 in its primary market on the previous trading day; and (ii) have an average daily trading volume of at least 1,000,000 shares per day for the three (3) preceding calendar months. The Exchange notes that there is no limit to the number of classes that will be eligible for inclusion in the proposed program, provided, of course, that the underlying stocks satisfy both the price and average daily trading volume requirements of the proposed program.

The Exchange also proposes that after a stock is added to the Low Priced Stock Strike Price Interval Program, the Exchange may list $0.50 strike price intervals from $0.50 up to $2.00.[13] For the purpose of adding strikes under the Low Priced Stock Strike Price Interval Program, the ''price of the underlying stock'' shall be measured in the same way as ''the price of the underlying security'' as set forth in Rule 404A(b)(1).[14] Further, no additional series in $0.50 intervals may be listed if the underlying stock closes at or above $2.50 in its primary market. Additional series in $0.50 intervals may not be added until the underlying stock again closes below $2.50.

The Exchange's proposal addresses a gap in strike coverage for low priced stocks. The $0.50 Strike Program considers stocks that close below $5.00 and limits the number of option classes listed to no more than 20 individual stocks (provided that the open interest criteria is also satisfied). Whereas, the Exchange's proposal has a narrower focus, with respect to the underlying's stock price, and is targeted to those stocks that close below $2.50 and does not limit the number of stocks that may participate in the program (provided that the average daily trading volume is also satisfied). The Exchange does not believe that any market disruptions will be encountered with the addition of these new strikes. The Exchange represents that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Low Priced Stock Strike Price Interval Program.

The Exchange believes that its average daily trading volume requirement of 1,000,000 shares is a reasonable threshold to ensure adequate liquidity in eligible underlying stocks as it is substantially greater than the thresholds used for listing options on equities, American Depository Receipts, and broad-based indexes. Specifically, underlying securities with respect to which put or call option contracts are approved for listing and trading on the Exchange must meet certain criteria as determined by the Exchange. One of those requirements is that trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.[15] Rule 402(f) provides the criteria for listing options on American Depositary Receipts (''ADRs'') if they meet certain criteria and guidelines set forth in Exchange Rule 402. One of the requirements is that the average daily trading volume for the security in the U.S. markets over the three (3) months preceding the selection of the ADR for options trading is 100,000 or more shares.[16] Finally, the Exchange may trade options on a broad-based index pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934 provided a number of conditions are satisfied. One of those conditions is that each component security that accounts for at least one percent (1%) of the weight of the index has an average daily trading volume of at least 90,000 shares during the last six month period.[17]

Additionally, the Exchange proposes to amend the table in Interpretations and Policies .11 of Rule 404 to insert a new column to harmonize the Exchange's proposal to the strike intervals for Short Term Options Series as described in Interpretations and Policies .02 of Rule 404. The table in Interpretations and Policies .11 is intended to limit the intervals between strikes for multiply listed equity options within the Short Term Options Series program that have an expiration date more than twenty-one days from the listing date. Specifically, the table defines the applicable strike intervals for options on underlying stocks given the closing price on the primary market on the last day of the calendar quarter, and a corresponding average daily volume of the total number of options contracts traded in a given security for the applicable calendar quarter divided by the number of trading days in the applicable calendar quarter.[18] However, the lowest share price column is titled ''Less than $25.'' The Exchange now proposes to insert a column titled ''Less than $2.50'' and to set the strike interval at $0.50 for each average daily volume tier represented in the table. Also, the Exchange proposes to amend the heading of the column currently titled ''Less than $25,'' to ''$2.50 to less than $25'' as a result of the adoption of the new proposed column, ''Less than $2.50.'' The Exchange believes this change will remove any potential conflict between the strike intervals under the Short Term Options Series Program and those described herein under the Exchange's proposal.

Impact of Proposal

The Exchange recognizes that its proposal will introduce new strikes in the marketplace and further acknowledges that there has been significant effort undertaken by the industry to curb strike proliferation. This initiative has been spearheaded by the Nasdaq BX who filed an initial proposal focused on the removal, and prevention of the listing, of strikes which are extraneous and do not add value to the marketplace (the ''Strike Interval Proposal'').[19] The Strike Interval Proposal was intended to remove repetitive and unnecessary

[11] *See* Interpretations and Policies .04 of Rule 404.

[12] *See* Securities Exchange Release Act No. 98917 (November 13, 2023), 88 FR 80361 (November 17, 2023) (SR–MIAX–2023–36) (Order Approving a Proposed Rule Change to Amend Exchange Rule 404, Series of Option Contracts Open for Trading).

[13] While the Exchange may list new strikes on underlying stocks that meet the eligibility requirements of the new program the Exchange will exercise its discretion and will not list strikes on underlying stocks the Exchange believes are subject to imminent delisting from their primary exchange.

[14] The Exchange notes this is the same methodology used in the $1 Strike Price Interval Program. *See* Interpretations and Policies .01(c)(3) of Rule 404.

[15] *See* Exchange Rule 402(b)(4).

[16] *See* Exchange Rule 402(f)(3)(ii).

[17] *See* Exchange Rule 1802(d)(7).

[18] *See* Securities Exchange Release Act No. 91125 (February 21, 2021), 86 FR 10375 (February 19, 2021) (SR–BX–2020–032) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Options 4, Section 5, To Limit Short Term Options Series Intervals Between Strikes That Are Available for Quoting and Trading on BX).

[19] *See* Securities Exchange Act No. 91225 (February 12, 2021), 86 FR 10375 (February 12, 2021) (SR–BX–2020–032) (BX Strike Approval Order); *see also* BX Options Strike Proliferation Proposal (February 25, 2021) available at: *https://www.nasdaq.com/solutions/bx-options-strike-proliferation-proposal*).

strike listings across the weekly expiries. Specifically, the Strike Interval Proposal aimed to reduce the density of strike intervals that would be listed in the later weeks, by creating limitations for intervals between strikes which have an expiration date more than twenty-one days from the listing date.[20] The Strike Interval Proposal took into account OCC customer-cleared volume, using it as an appropriate proxy for demand. The Strike Interval Proposal was designed to maintain strikes where there was customer demand and eliminate strikes where there wasn't. At the time of its proposal Nasdaq BX estimated that the Strike Interval Proposal would reduce the number of strikes it listed by 81,000.[21] The Exchange proposes to amend the table to define the strike interval at $0.50 for underlying stocks with a share price of less than $2.50. The Exchange believes this amendment will harmonize the Exchange's proposal with the Strike Interval Proposal described above.

The Exchange recognizes that its proposal will moderately increase the total number of option series available on the Exchange. However, the Exchange's proposal is designed to only add strikes where there is investor demand [22] which will improve market quality. Under the requirements for the Low Priced Stock Strike Price Interval Program as described herein, the Exchange determined that as of August 9, 2023, 106 symbols met the proposed criteria. Of those symbols 36 are currently in the $1 Strike Price Interval Program with $1.00 and $2.00 strikes listed. Under the Exchange's proposal the Exchange would add the $0.50 and $1.50 strikes for these symbols for the current expiration terms. The remaining 70 symbols eligible under the Exchange's proposal would have $0.50, $1.00, $1.50 and $2.00 strikes added to their current expiration terms. Therefore, for the 106 symbols eligible for the Low Priced Stock Strike Price Interval Program a total of approximately 3,250 options would be added. As of August 9, 2023, the Exchange listed 1,106,550 options, therefore the additional options that would be listed under this proposal would represent a very minor increase of 0.294% in the number of options listed on the Exchange.

The Exchange does not believe that its proposal contravenes the industry's efforts to curtail unnecessary strikes. The Exchange's proposal is targeted to only underlying stocks that close at less than $2.50 and that also meet the average daily trading volume requirement. Additionally, because the strike increment is $0.50 there are only a total of four strikes that may be listed under the program ($0.50, $1.00, $1.50, and $2.00) for an eligible underlying stock. Finally, if an eligible underlying stock is in another program (*e.g.,* the $0.50 Strike Program or the $1 Strike Price Interval Program) the number of strikes that may be added is further reduced if there are pre-existing strikes as part of another strike listing program. Therefore, the Exchange does not believe that it will list any unnecessary or repetitive strikes as part of its program, and that the strikes that will be listed will improve market quality and satisfy investor demand.

The Exchange further believes that the Options Price Reporting Authority (''OPRA''), has the necessary systems capacity to handle any additional messaging traffic associated with this proposed rule change. The Exchange also believes that Members [23] will not have a capacity issue as a result of the proposed rule change. Finally, the Exchange believes that the additional options will serve to increase liquidity, provide additional trading and hedging opportunities for all market participants, and improve market quality.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with section 6(b) of the Act [24] in general, and furthers the objectives of section 6(b)(4) of the Act [25] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of section 6(b)(5) of the Act [26] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system as the Exchange has identified a subset of stocks that are trading under $2.50 and do not have meaningful strikes available. For example, on August 9, 2023, symbol SOND closed at $0.50 and had open interest of over 44,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[27] Currently the lowest strike listed is for $2.50, making the lowest strike 400% away from the closing stock price. Another symbol, CTXR, closed at $0.92 on August 9, 2023, and had open interest of over 63,000 contracts and an average daily trading volume in the underlying stock of over 1,900,000 shares for the three preceding calendar months.[28] Similarly, the lowest strike listed is for $2.50, making the lowest strike more than 170% away from the closing stock price. Currently, such products have no at-the-money options, as well as no in-the-money calls or out-of-the-money puts. The Exchange's proposal will provide additional strikes in $0.50 increments from $0.50 up to $2.00 to provide more meaningful trading and hedging opportunities for this subset of stocks. Given the increased granularity of strikes as proposed under the Exchange's proposal out-of-the-money puts and in-the-money calls will be created. The Exchange believes this will allow market participants to tailor their investment and hedging needs more effectively.

The Exchange believes its proposal promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest by adding strikes that improves market quality and satisfies investor demand. The Exchange does not believe that the number of strikes that will be added under the program will negatively impact the market. Additionally, the proposal does not run counter to the

[20] *See* Securities Exchange Act No. 91225 (February 12, 2021), 86 FR 10375 (February 12, 2021) (SR–BX–2020–032).

[21] *See id.*

[22] *See* proposed Interpretations and Policies .12(a) of Rule 404 which requires that an underlying stock have an average daily trading volume of 1,000,000 shares for the three (3) preceding months to be eligible for inclusion in the Low Priced Stock Strike Price Interval Program.

[23] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of MIAX Pearl Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(4).

[26] 15 U.S.C. 78f(b)(5).

[27] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/SOND/history?p=SOND* (last visited August 10, 2023).

[28] *See* Yahoo! Finance, *https://finance.yahoo.com/quote/CTXR/history?p=CTXR* (last visited August 10, 2023).

efforts undertaken by the industry to curb strike proliferation as that effort focused on the removal and prevention of extraneous strikes where there was no investor demand. The Exchange's proposal requires the satisfaction of an average daily trading volume threshold in addition to the underlying stock closing at a price below $2.50 to be eligible for the program. The Exchange believes that the average daily trading volume threshold of the program ensures that only strikes with investor demand will be listed and fills a gap in strike interval coverage as described above. Further, being that the strike interval is $0.50, there are only a maximum of four strikes that may be added ($0.50, $1.00, $1.50, and $2.00). Therefore, the Exchange does not believe that its proposal will undermine the industry's efforts to eliminate repetitive and unnecessary strikes in any fashion.

The Exchange believes that its average daily trading volume threshold promotes just and equitable principles of trade and removes impediments to and perfects the mechanisms of a free and open market and a national market system and, in general, protects investors and the public interest as it is designed to permit only those stocks with demonstrably high levels of trading activity to participate in the program. The Exchange notes that its average daily trading volume requirement is substantially greater that the average daily trading requirement currently in place on the Exchange for options on equity underlyings,[29] ADRs,[30] and broad-based indexes.[31]

The Exchange believes that the proposed rule change is consistent with section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and the rules and regulations thereunder, and the rules of the Exchange. The proposed rule change allows the Exchange to respond to customer demand to provide meaningful strikes for low priced stocks. The Exchange does not believe that the proposed rule would create any capacity issue or negatively affect market functionality. Additionally, the Exchange represents that it has the necessary systems capacity to support the new options series and handle additional messaging traffic associated with this proposed rule change. The Exchange also believes that its Members will not experience any capacity issues as a result of this proposal. In addition, the Exchange represents that it believes that additional strikes for low priced stocks will serve to increase liquidity available as well and improve price efficiency by providing more trading opportunities for all market participants. The Exchange believes that the proposed rule change will benefit investors by giving them increased opportunities to execute their investment and hedging decisions.

Finally, the Exchange believes its proposal is designed to prevent fraudulent and manipulative acts and practices as options may only be listed on underlyings that satisfy the listing requirements of the Exchange as described in Exchange Rule 402, Criteria for Underlying Securities. Specifically, Rule 402 requires that underlying securities for which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria: (1) the security must be registered and be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) the security shall be characterized by a substantial number of outstanding shares that are widely held and actively traded.[32] Additionally, Rule 402 provides that absent exceptional circumstances, an underlying security will not be selected for options transactions unless: (1) there are a minimum of seven (7) million shares of the underlying security which are owned by persons other than those required to report their stock holdings under section 16(a) of the Exchange Act; (2) there are a minimum of 2,000 holders of the underlying security; (3) the issuer is in compliance with any applicable requirements of the Exchange Act; and (4) trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve (12) months.[33] The Exchange's proposal does not impact the eligibility of an underlying stock to have options listed on it, but rather addresses only the listing of new additional option classes on an underlying listed on the Exchange in accordance to the Exchange's listings rules. As such, the Exchange believes that the listing requirements described in Exchange Rule 402 address potential concerns regarding possible manipulation. Additionally, in conjunction with the proposed Average Daily Volume requirement described herein, the Exchange believes any possible market manipulation is further mitigated.

*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 its proposed rule change will impose any burden on intra-market competition as the Rules of the Exchange apply equally to all Members of the Exchange and all Members may trade the new proposed strikes if they so choose. Specifically, the Exchange believes that investors and market participants will significantly benefit from the availability of finer strike price intervals for stocks priced below $2.50, which will allow them to tailor their investment and hedging needs more effectively.

The Exchange does not believe that its proposed rule change will impose any burden on inter-market competition, as nothing prevents other options exchanges from proposing similar rules to list and trade options on low priced stocks. Rather the Exchange believes that its proposal will promote inter-market competition, as the Exchange's proposal will result in additional opportunities for investors to achieve their investment and trading objectives, to the benefit of investors, market participants, and the marketplace in general.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(3)(A) of the Act[34] and Rule 19b–4(f)(6)[35] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[36]

[29] *See supra* note 15.

[30] *See supra* note 16.

[31] *See supra* note 17.

[32] *See* Exchange Rule 402(a)(1) and (2).

[33] *See* Exchange Rule 402(b)(1), (2), (3) and (4).

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6).

[36] 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

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [37] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes it has approved a proposed rule change substantially identical to the one proposed by the Exchange.[38] The proposed change raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[39]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–PEARL–2023–66 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–PEARL–2023–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2023–66 and should be submitted on or before December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

**Sherry R. Haywood,**

*Assistant Secretary.*

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shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[37] 17 CFR 240.19b–4(f)(6)(iii).

[38] *See supra* note 3.

[39] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[40] 17 CFR 200.30–3(a)(12), (59).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–99036; File No. SR–CboeBZX–2023–096]**

## Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Short Term Option Series Program

November 29, 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 November 22, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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 as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [3] 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

The Exchange proposes to amend its Short Term Option Series Program.

The text of the proposed rule change is available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 19.6, Interpretation and Policy .05. Specifically, the Exchange proposes to expand the Short Term Option Series Program to permit the listing of two Wednesday expirations for options on United States Oil Fund, LP (''USO''), United States Natural Gas Fund, LP (''UNG''), SPDR Gold Shares (''GLD''), iShares Silver Trust (''SLV''), and iShares 20+ Year Treasury Bond ETF (''TLT'') (collectively ''Exchange Traded

[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).

Products'' or ''ETPs''). This is a competitive filing that is based on a proposal submitted by Nasdaq ISE, LLC (''Nasdaq ISE'') and recently approved by the Commission.[5]

Currently, as set forth in Rule 19.6, Interpretation and Policy .05, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates''). The Exchange may have no more than a total of five Friday Short Term Option Expiration Dates (''Short Term Option Weekly Expirations''). If the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date for Short Term Option Weekly Expirations will be the first business day immediately prior to that Friday.

Additionally, the Exchange may open for trading series of options on the symbols provided in Table 1 of Rule 19.6, Interpretation and Policy .05(h) that expire at the close of business on each of the next two Mondays, Tuesdays, Wednesdays, and Thursdays, respectively, that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Short Term Option Daily Expirations''). For those symbols listed in Table 1, the Exchange may have no more than a total of two Short Term Option Daily Expirations for each of Monday, Tuesday, Wednesday, and Thursday expirations at one time.

At this time, the Exchange proposes to expand the Short Term Option Daily Expirations to permit the listing and trading of options on USO, UNG, GLD, SLV, and TLT expiring on Wednesdays. The Exchange proposes to permit two Short Term Option Expiration Dates beyond the current week for each Wednesday expiration at one time.[6] In order to effectuate the proposed changes, the Exchange would add USO, UNG, GLD, SLV, and TLT to Table 1 of Rule 19.6, Interpretation and Policy .05(h), which specifies each symbol that qualifies as a Short Term Option Daily Expiration.

The proposed Wednesday USO, UNG, GLD, SLV, and TLT expirations will be similar to the current Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations set forth in Rule 19.6, Interpretation and Policy .05, such that the Exchange may open for trading on any Tuesday or Wednesday that is a business day (beyond the current week) series of options on USO, UNG, GLD, SLV, and TLT to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (''Wednesday USO Expirations,'' ''Wednesday UNG Expirations,'' ''Wednesday GLD Expirations,'' ''Wednesday SLV Expirations,'' and ''Wednesday TLT Expirations'') (collectively, ''Wednesday ETP Expirations'').[7] In the event Short Term Option Daily Expirations expire on a Wednesday and that Wednesday is the same day that a Quarterly Options Series expires, the Exchange would skip that week's listing and instead list the following week; the two weeks would therefore not be consecutive. Today, Wednesday expirations in SPY, QQQ, and IWM similarly skip the weekly listing in the event the weekly listing expires on the same day in the same class as a Quarterly Options Series.

USO, UNG, GLD, SLV, and TLT Friday expirations would continue to have a total of five Short Term Option Expiration Dates provided those Friday expirations are not Fridays in which monthly options series or Quarterly Options Series expire (''Friday Short Term Option Expiration Dates'').

Similar to Wednesday SPY, QQQ, and IWM Short Term Option Daily Expirations within Rule 19.6, Interpretation and Policy .05(h), the Exchange proposes that it may open for trading on any Tuesday or Wednesday that is a business day series of options on USO, UNG, GLD, SLV, and TLT that expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which Quarterly Options Series expire.

The interval between strike prices for the proposed Wednesday ETP Expirations will be the same as those for the current Short Term Option Series for Friday expirations applicable to the Short Term Option Series Program.[8] Specifically, the Wednesday ETP Expirations will have a strike interval of $0.50 or greater for strike prices below $100, $1 or greater for strike prices between $100 and $150, and $2.50 or greater for strike prices above $150.[9] As is the case with other equity options series listed pursuant to the Short Term Option Series Program, the Wednesday ETP Expirations series will be P.M.-settled.

Pursuant to Rule 19.6, Interpretation and Policy .05(h), with respect to the Short Term Option Series Program, a Wednesday expiration series shall expire on the first business day immediately prior to that Wednesday, *e.g.,* Tuesday of that week if the Wednesday is not a business day.

Currently, for each option class eligible for participation in the Short Term Option Series Program, the Exchange is limited to opening thirty (30) series for each expiration date for the specific class.[10] The thirty (30) series restriction does not include series that are open by other securities exchanges under their respective weekly rules; the Exchange may list these additional series that are listed by other options exchanges.[11] With the proposed changes, this thirty (30) series restriction would apply to Wednesday USO, UNG, GLD, SLV, and TLT Short Term Option Daily Expirations as well. In addition, the Exchange will be able to list series that are listed by other exchanges, assuming they file similar rules with the Commission to list Wednesday ETP Expirations.

With this proposal, Wednesday ETP Expirations would be treated similarly to existing Wednesday SPY, QQQ, and IWM Expirations. With respect to monthly option series, Short Term Option Daily Expirations will be permitted to expire in the same week in which monthly option series on the same class expire. Not listing Short Term Option Daily Expirations for one week every month because there was a

[5] *See* Securities Exchange Act Release No. 98905 (November 13, 2023) (SR–ISE–2023–11) (Order Approving a Proposed Rule Change to Amend the Short Term Option Series Program to Permit the Listing of Two Wednesday Expirations for Options on Certain Exchange Traded Products) (''Nasdaq ISE Approval'').

[6] Consistent with the current operation of the rule, the Exchange notes that if it adds a Wednesday expiration on a Tuesday, it could technically list three outstanding Wednesday expirations at one time. The Exchange will therefore clarify the rule text in Rule 19.6, Interpretation and Policy .05(h) to specify that it can list two Short Term Option Expiration Dates *beyond the current week* for each Monday, Tuesday, Wednesday, and Thursday expiration.

[7] While the relevant rule text in Rule 19.6, Interpretation and Policy .05(h) also indicates that the Exchange will not list such expirations on a Wednesday that is a business day in which monthly options series expire, practically speaking this would not occur.

[8] *See* Rule 19.6, Interpretation and Policy .05(e).

[9] *Id.*

[10] *See* Rule 19.6, Interpretation and Policy .05(a).

[11] *Id.*

monthly on that same class on the Friday of that week would create investor confusion.

Further, as with Wednesday SPY, QQQ, and IWM Expirations, the Exchange would not permit Wednesday ETP Expirations to expire on a business day in which monthly options series or Quarterly Options Series expire. Therefore, all Short Term Option Daily Expirations would expire at the close of business on each of the next two Wednesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire. The Exchange believes that it is reasonable to not permit two expirations on the same day in which a monthly options series or a Quarterly Options Series would expire because those options would be duplicative of each other.

The Exchange does not believe that any market disruptions will be encountered with the introduction of Wednesday ETP Expirations. The Exchange has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Wednesday ETP Expirations. The Exchange currently trades P.M.-settled Short Term Option Series that expire Wednesday for SPY, QQQ and IWM and has not experienced any market disruptions nor issues with capacity. Today, the Exchange has surveillance programs in place to support and properly monitor trading in Short Term Option Series that expire Wednesday for SPY, QQQ and IWM.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[13] 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.

Similar to Wednesday expirations in SPY, QQQ, and IWM, the proposal to permit Wednesday ETP Expirations, subject to the proposed limitation of two expirations beyond the current week, would protect investors and the public interest by providing the investing public and other market participants more choice and flexibility to closely tailor their investment and hedging decisions in these options and allow for a reduced premium cost of buying portfolio protection, thus allowing them to better manage their risk exposure.

The Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in the proposed option expirations, in the same way that it monitors trading in the current Short Term Option Series for Wednesday SPY, QQQ and IWM expirations. The Exchange also represents that it has the necessary system capacity to support the new expirations. Finally, the Exchange does not believe that any market disruptions will be encountered with the introduction of these option expirations. As discussed above, the Exchange believes that its proposal is a modest expansion of weekly expiration dates for GLD, SLV, USO, UNG, and TLT given that it will be limited to two Wednesday expirations beyond the current week. Lastly, the Exchange believes its proposal will not be a strain on liquidity provides because of the multi-class nature of GLD, SLV, USO, UNG, and TLT and the available hedges in highly correlated instruments, as described above.

The Exchange believes that the proposal is consistent with the Act as the proposal would overall add a small number of Wednesday ETP Expirations by limiting the addition of two Wednesday expirations beyond the current week. The addition of Wednesday ETP Expirations would remove impediments to and perfect the mechanism of a free and open market by encouraging Market Makers to continue to deploy capital more efficiently and improve market quality. The Exchange believes that the proposal will allow market participants to expand hedging tools and tailor their investment and hedging needs more effectively in USO, UNG, GLD, SLV, and TLT as these funds are most likely to be utilized by market participants to hedge the underlying asset classes.

Similar to Wednesday SPY, QQQ, and IWM expirations, the introduction of Wednesday ETP Expirations is consistent with the Act as it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively, thus allowing them to better manage their risk exposure. Today, the Exchange lists Wednesday SPY, QQQ, and IWM Expirations.[14]

The Exchange believes the Short Term Option Series Program has been successful to date and that Wednesday ETP Expirations should simply expand the ability of investors to hedge risk against market movements stemming from economic releases or market events that occur throughout the month in the same way that the Short Term Option Series Program has expanded the landscape of hedging. There are no material differences in the treatment of Wednesday SPY, QQQ and IWM expirations compared to the proposed Wednesday ETP Expirations. Given the similarities between Wednesday SPY, QQQ and IWM expirations and the proposed Wednesday ETP Expirations, the Exchange believes that applying the provisions in Rule 19.6, Interpretation and Policy .05(h) that currently apply to Wednesday SPY, QQQ and IWM expirations is justified. For example, the Exchange believes that allowing Wednesday ETP Expirations and monthly ETP expirations in the same week will benefit investors and minimize investor confusion by providing Wednesday ETP Expirations in a continuous and uniform manner.

*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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[15]

While the proposal will expand the Short Term Options Expirations to allow Wednesday ETP Expirations to be listed on the Exchange, the Exchange believes that this limited expansion for Wednesday expirations for options on USO, UNG, GLD, SLV, and TLT will not impose an undue burden on competition; rather, it will meet customer demand. The Exchange believes that market participants will continue to be able to expand hedging tools and tailor their investment and

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Rule 19.6, Interpretation and Policy .05(h).

[15] *See* Nasdaq ISE Approval.

hedging needs more effectively in USO, UNG, GLD, SLV, and TLT given multi-class nature of these products and the available hedges in highly correlated instruments, as described above. Similar to Wednesday SPY, QQQ and IWM expirations, the introduction of Wednesday ETP Expirations does not impose an undue burden on competition. The Exchange believes that it will, among other things, expand hedging tools available to market participants and allow for a reduced premium cost of buying portfolio protection. The Exchange believes that Wednesday ETP Expirations will allow market participants to purchase options on USO, UNG, GLD, SLV, and TLT based on their timing as needed and allow them to tailor their investment and hedging needs more effectively. The Exchange does not believe the proposal will impose any burden on inter-market competition, as nothing prevents the other options exchanges from proposing similar rules to list and trade Wednesday ETP Expirations. Further, the Exchange does not believe the proposal will impose any burden on intramarket competition, as all market participants will be treated in the same manner under this proposal.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to the Exchange, the proposed rule change is a competitive response to a filing submitted by Nasdaq ISE that was recently approved by the Commission.[22] The Exchange has stated that waiver of the 30-day operative delay would ensure fair competition among the exchanges by allowing the Exchange to permit the listing of two Wednesday expirations for options on ETPs. The Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–096 on the subject line.

*Paper Comments*

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

All submissions should refer to file number SR–CboeBZX–2023–096. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–096 and should be submitted on or before December 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023–26593 Filed 12–4–23; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] *See supra* note 5.

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12), (59).

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** 30-Day notice.

**SUMMARY:** The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested members of the public an additional 30 days to provide comments on the proposed collection of information.

**DATES:** Submit comments on or before January 4, 2024.

**ADDRESSES:** Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

**FOR FURTHER INFORMATION CONTACT:** You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** The Small Business Administration requires information to be disclosed to the buyer when a secondary market loan is transferred from one investor to another. This information includes a constant annual prepayment rate based upon the seller's analysis of prepayment histories of SBA guaranteed loans with similar maturities. Additionally, information is required on the terms. conditions and yield of the security being transferred.

**Solicitation of Public Comments**

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

**OMB Control 3245–0212**

*Title:* ''Form of Detached Assignment for U.S. Small Business Administration Loan Pool or Guarantee Interest Certificate''.

*Description of Respondents:* Secondary market.

*SBA Form Number:* SBA Form 1088.

*Estimated Number of Respondents:* 836.

*Estimated Annual Responses:* 836.

*Estimated Annual Hour Burden:* 733.

**Curtis Rich,**

*Agency Clearance Officer.*

[FR Doc. 2023–26624 Filed 12–4–23; 8:45 am]

**BILLING CODE 8026–09–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability of Consultation Documents for Public Comment Under Section 106 of the National Historic Preservation Act; Correction

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

**ACTION:** Notice; correction

**SUMMARY:** The Federal Aviation Administration, in cooperation with the National Park Service, published a document in the **Federal Register** on November 2, 2023, announcing the opportunity for the public to comment on the results of the FAA's efforts to identify historic properties, evaluate the properties' significance, and assess the undertaking's effects on them as part of the development of Air Tour Management Plan for Canyon de Chelly National Monument pursuant to the National Parks Air Tour Management Act of 2000 and its implementing regulations. The document contained an incorrect date regarding the comment deadline for the Consultation Documents for Public Comment Under Section 106 of the National Historic Preservation Act.

**FOR FURTHER INFORMATION CONTACT:** Sandra Fox, (202) 267–0928, *Sandra.Y.Fox@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Correction**

In the **Federal Register** of November 2, 2023, in FR Doc. 2023–24191, on page 75364, in the second column, correct the **DATES** caption to read: DATES: Any member of the public is encouraged to provide views on this project to the agencies. The agencies will accept and consider comments related to section 106. Comments must be received on or before December 4, 2023, by 11:59 MDT. Comments will be received on the PEPC website. The Park's website link is *https://parkplanning.nps.gov/CACHATMP.*

Issued in Washington, DC, on November 28, 2023.

**Sandra Fox,**

*Environmental Protection Specialist, FAA Office of Environment & Energy.*

[FR Doc. 2023–26605 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2023–0236]**

### Commercial Driver's License: Florida Department of Highway Safety and Motor Vehicles; Application for Exemption

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

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that the Florida Department of Highway Safety and Motor Vehicles (FLHSMV) has applied for an exemption from the commercial driver's license (CDL) skills testing regulation requiring the three-part CDL skills test to be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, and on-road skills. The FLHSMV is seeking an exemption to allow the tester, at their discretion, to continue testing an applicant who fails the pre-trip inspection or basic vehicle controls segments of the CDL test and allow the applicant to come back at a later date to retake the failed segment(s) only. FMCSA requests public comment on the applicant's request for exemption.

**DATES:** Comments must be received on or before January 4, 2024.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2023–0236 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2023–0236) for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

*Privacy Act:* In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice DOT/ALL–14 FDMS, which can be reviewed under the ''Department Wide System of Records Notices'' link at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edit and are searchable by the name of the submitter.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 366–2722; *richard.clemente@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2023–0236), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number ''FMCSA–2023–0236'' in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, click the ''Comment'' button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

*Confidential Business Information (CBI)*

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely maintain a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reason for the denial (49 CFR 381.315(c)(2)). The exemption may be renewed (49 CFR 381.300(b)).

## III. Applicant's Request

The FLHSMV seeks an exemption from the requirement in 49 CFR 383.133(c)(6) which requires the three-part CDL test be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, and on-road skills. Florida operates as a third-party testing state, where nearly all CDL skills tests are conducted by third-party testers. If an applicant fails one segment of the test, they cannot attempt the next segment(s) and must return on a different day to retake all three parts of the test. The FLHSMV is seeking an exemption to allow the tester, at their discretion, to continue testing an applicant who fails the pre-trip inspection or basic vehicle controls segments of the test and allow the applicant to come back at a later date to retake only the failed segment(s). The applicant cites that the most failed segment of the test is the pre-trip inspection, and if the exemption is granted, the tester could continue to test basic vehicle control skills and on-road skills in this instance. If the CDL applicant passed these other portions of the test, they could return at a later date and retake just the pre-trip inspection portion of the test. The exemption applicant further states that, if granted, the exemption would allow their compliance staff to better utilize their time and resources in completing the required monitoring of third-party testers. FLHSMV believes the exemption would not compromise safety, because the decision to continue with the test would reside with certified, experienced testers. The FLHSMV also notes that,

with the implementation of the Federal Entry-Level Driver Training regulations, most applicants being tested have been certified as proficient in operating commercial motor vehicles, having completed behind-the-wheel training that prepares them to safely operate a commercial motor vehicle during the on-road portion of the CDL skills test.

A copy of the FLHSMV's application for exemption is available for review in the docket for this notice.

**IV. Request for Comments**

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on FLHSMV's application for an exemption from the requirement in 49 CFR 383.133(c)(6) that the CDL skills test must be administered and successfully completed in the following order: pre-trip inspection, basic vehicle control skills, and on-road skills. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2023–26689 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2023–0217]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: YACHT MASTER (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 4, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2023–0217 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0217 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0217, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel YACHT MASTER is:

—*Intended Commercial Use of Vessel:* ''Cruises for local restaurant patrons.''

—*Geographic Region Including Base of Operations:* ''California. (Base of Operations: Alameda, CA)''

—*Vessel Length and Type:* 58′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2023–0217 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2023–0217 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such

confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

**Privacy Act**

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2023–26686 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2023–0220]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PANTALA (Sail); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 4, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2023–0220 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0220 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0220, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, D.C. 20590. Telephone: (202) 366–0903. Email *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel PANTALA is:

—*Intended Commercial Use of Vessel:* ''Sailing trips.''

—*Geographic Region Including Base of Operations:* ''Maine, New York. (Base of Operations: Belfast, ME)''

—*Vessel Length and Type:* 36′ Sailboat

The complete application is available for review identified in the DOT docket as MARAD 2023–0220 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2023–0220 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential

under those procedures will be exempt from disclosure under FOIA.

**Privacy Act**

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2023–26684 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2023–0219]**

### Coastwise Endorsement Eligibility Determination for a Foreign-built Vessel: SAILING BEAUTY (Sail); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 4, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2023–0219 by any one of the following methods:

- *Federal eRulemaking Portal: Go to https://www.regulations.gov.* Search MARAD–2023–0219 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0219, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel SAILING BEAUTY is:

—*Intended Commercial use of Vessel:* ''Private Charters of 6 passengers up to 12 passengers sailing the coastline of Oahu.''

—*Geographic Region Including Base of Operations:* ''Hawaii. (Base of Operations: Kewalo Basin Harbor, HI)''

—*Vessel Length And Type:* 37′ Masthead Sloop Sailboat

The complete application is available for review identified in the DOT docket as MARAD 2023–0219 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2023–0219 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

**Privacy Act**

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2023–26685 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2023–0218]**

### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: BIG BETTY (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before January 4, 2024.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2023–0218 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2023–0218 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2023–0218, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email *patricia.hagerty@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel BIG BETTY is:

—Intended Commercial Use of Vessel: ''Passenger Charter.''

—Geographic Region Including Base of Operations: ''Washington state. (Base of Operations: Seattle, WA)''

—Vessel Length and Type: 39′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2023–0218 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

*How do I submit comments?*

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*Where do I go to read public comments, and find supporting information?*

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2023–0218 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

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(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2023–26683 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2019–0097; Notice 2]**

### FCA US, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition.

**SUMMARY:** FCA US LLC (f/k/a Chrysler Group LLC) (FCA) has determined that certain model year (MY) 2019 Chrysler Pacifica motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims and Motor Home/ Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less.* FCA filed a noncompliance report dated August 27, 2019. FCA subsequently petitioned NHTSA on September 20, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of FCA's petition.

**FOR FURTHER INFORMATION CONTACT:** Ahmad Barnes, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–7236.

**SUPPLEMENTARY INFORMATION:**

#### I. Overview

FCA has determined that certain MY 2019 Chrysler Pacifica motor vehicles do not fully comply with paragraphs S4.3(a) and (b) of FMVSS No. 110, *Tire Selection and Rims and Motor Home/ Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less* (49 CFR 571.110). FCA filed a noncompliance report dated August 27, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* FCA subsequently petitioned NHTSA on September 20, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of FCA's petition was published with a 30-day public comment period, on January 6, 2020, in the **Federal Register** (85 FR 553). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0097.''

#### II. Vehicles Involved

Approximately 350 MY 2019 Chrysler Pacifica motor vehicles, manufactured between October 4, 2018, and July 3, 2019, are potentially involved.

#### III. Noncompliance

FCA explains that the noncompliance is that the subject vehicle's tire placard label erroneously states the seating capacity as seven occupants rather than eight occupants, and shows a combined occupant and cargo weight of 1,150 lbs. rather than 1,240 lbs. as required by paragraph S4.3 of FMVSS No. 110.

#### IV. Rule Requirements

Paragraphs S4.3(a) and S4.3(b) of FMVSS No. 110 include the requirements relevant to this petition. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in paragraphs S4.3(a), vehicle capacity weight expressed as the combined weight of occupants and cargo and S4.3(b) designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location.

#### V. Summary of FCA's Petition

The following views and arguments presented in this section, are the views and arguments provided by FCA.

FCA described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. FCA submitted the following views and arguments in support of the petition:

1. While the number of occupants and the calculated weight are incorrect on the vehicle placard label, the calculated weight for seven occupants (1,150 lbs.) is below the calculated weight for eight occupants (1,240 lbs.), and therefore, there is no risk of vehicle overloading.

2. All information required for maintaining and/or replacing the front and rear tires is correct on the vehicle placard of the affected vehicles. In fact, the recommended cold tire inflation pressures for both the seven occupants and the eight occupant vehicles are the same. Therefore, there is no risk of under-inflation.

3. All other applicable requirements of FMVSS No. 110 have been met.

4. The vehicle certification label is correct. Vehicles with seven occupants and eight occupants share the same Gross Vehicle Weight Rating (6055 lbs.), and front and rear Gross Axle Weight Rating (2950 lbs. and 3200 lbs., respectively).

5. The number of seats and the number of safety belts installed in the vehicle will clearly indicate to a vehicle owner the actual seating capacity, the rear seating of the affected vehicles contains six seat belt assemblies, and provides adequate space for six people to occupy the rear seats. Further, the vehicle in fact does accommodate six occupants and not five as labeled.

6. FCA is not aware of any crashes, injuries, or customer complaints associated with this condition.

7. NHTSA has previously granted inconsequential treatment for FMVSS 110 noncompliance for incorrect vehicle placard seated capacity values. Examples of the Agency granting a similar inconsequentiality petition for vehicle placard incorrect seated capacity are:

- General Motors, LLC, 79 FR 69557 (November 21, 2014)
- Ford Motor Company, 74 FR 69373 (December 31, 2009)
- BMW of North America, LLC, a subsidiary of BMW AG, 78 FR 43964 (July 22, 2013)

FCA seeks exemption from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120.

#### VI. Comments

NHTSA received one comment from the general public. While the Agency takes great interest in the public's concerns and appreciates the commenter's feedback, the comment does not address the purpose of this particular petition.

#### VII. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in a standard—as opposed to a labeling requirement with no performance implications—is more substantial and difficult to meet. Accordingly, the Agency has not found many such

noncompliances inconsequential.[1] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance issues was the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [3] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [4]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[5] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[6] These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

FCA explains that the noncompliance is that the subject vehicles' tire placard label erroneously states the seating capacity as seven occupants rather than eight occupants, and shows a combined occupant and cargo weight of 1,150 lbs. rather than 1,240 lbs. as required by paragraph S4.3 of FMVSS No. 110.

NHTSA has reviewed and accepts FCA's analyses and supporting documentation that the noncompliance is inconsequential to motor vehicle safety. FCA has provided sufficient documentation that other than the placard/labeling error, the vehicles comply with all other safety performance requirements of FMVSS 110. If owners were to follow the information on the label, there would be no risk of overloading the vehicle's tires. While the tire and loading placards incorrectly indicate the number of seating positions and the calculated weight capacity, the subject labeling error alone poses little if any risk to motor vehicle safety since the number of seating positions is readily apparent in the subject vehicles. The rear seating of the affected vehicles contains six seat belt assemblies and provides adequate space for six people to occupy the rear seats. In addition, all information required for maintaining and/or replacing the front and rear tires is located on the vehicle placard of the affected vehicles.

## VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that FCA has met its burden of persuasion that the subject FMVSS No. 110 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, FCA's petition is hereby granted and FCA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that FCA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after FCA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2023–26604 Filed 12–4–23; 8:45 am]

**BILLING CODE 4910–59–P**

[1] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[4] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[5] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[6] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

## 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. Additionally, OFAC is publishing updates to the identifying information of one person currently included on the SDN List.

**DATES:** See Supplementary Information section for effective date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Bradley T. Smith, 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 Compliance, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

## Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

## Notice of OFAC Actions

A. On November 30, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

## Individuals

1. ALVARADO RUBIO, Teresa De Jesus, Puerto Vallarta, Jalisco, Mexico; DOB 27 Oct 1972; POB Puerto Vallarta, Jalisco, Mexico; nationality Mexico; Gender Female; C.U.R.P. AART721027MJCLBR09 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (December 17, 2021) (E.O. 14059) for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Cartel de Jalisco Nueva Generacion (CJNG), a person sanctioned pursuant to E.O. 14059.

2. DEL VILLAR CONTRERAS, Gabriela, Puerto Vallarta, Jalisco, Mexico; DOB 06 Oct 1984; POB Chihuahua, Chihuahua, Mexico; nationality Mexico; Gender Female; R.F.C. VICG841006F31 (Mexico); C.U.R.P. VICG841006MCHLNB04 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a person sanctioned pursuant to E.O. 14059.

3. FOUBERT CADENA, Manuel Alejandro, Puerto Vallarta, Jalisco, Mexico; Leon, Guanajuato, Mexico; DOB 16 Oct 1982; POB Guadalajara, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. FOCM821016HJCBDN02 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a person sanctioned pursuant to E.O. 14059.

## Entities

1. ASSIS REALTY AND VACATION CLUB, S.A. DE C.V., Puerto Vallarta, Jalisco, Mexico; Organization Established Date 16 Feb 2018; Organization Type: Real estate activities with own or leased property [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

2. AXIS SALE & MAINTENANCE BUILDINGS, S.A. DE C.V. (a.k.a. AXIS SALE AND MAINTENANCE BUILDINGS, S.A. DE C.V.), Puerto Vallarta, Jalisco, Mexico; Organization Established Date 16 Feb 2018; Organization Type: Real estate activities with own or leased property [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

3. BANLU COMERCIALIZADORA, S.A. DE C.V. (a.k.a. CEAR GYM; a.k.a. CENTRO DE ENTRENAMIENTO SEAR), Calle Jilguero 171, Fraccionamiento Los Sauces, Puerto Vallarta, Jalisco 48328, Mexico; Calle Volcan Popocatepetl 5250, Col. El Colli Urbano, Zapopan, Jalisco 45070, Mexico; Organization Type: Non-specialized wholesale trade; alt. Organization Type: Activities of sports clubs; R.F.C. BCO150928QF3 (Mexico); Folio Mercantil No. 92027 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Gabriela Del Villar Contreras, a person sanctioned pursuant to E.O. 14059.

4. COMERCIALIZADORA DE SERVICIOS TURISTICOS DE VALLARTA, S.A. DE C.V., Puerto Vallarta, Jalisco, Mexico; Organization Established Date 09 May 2007; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. 14080 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

5. CONDOS & VACATIONS BUILDINGS SALE & MAINTENANCE, S.A. DE C.V. (a.k.a. CONDOS AND VACATIONS BUILDINGS SALE AND MAINTENANCE, S.A. DE C.V.), Puerto Vallarta, Jalisco, Mexico; Organization Established Date 15 Oct 2016; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. N–2016030167 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

6. CROWLANDS, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 20 May 2019; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. N–2019039320 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Gabriela Del Villar Contreras, a person sanctioned pursuant to E.O. 14059.

7. GRUPO EMPRESARIAL EPTA, S.A. DE C.V. (a.k.a. GRUPO EPTA), Puerto Vallarta, Jalisco, Mexico; Leon, Guanajuato, Mexico; website *www.grupoepta.com;* Organization Established Date 14 Aug 2013; Organization Type: Management consultancy activities; Folio Mercantil No. 16378 (Mexico); alt. Folio Mercantil No. 68520 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, CJNG, a person sanctioned pursuant to E.O. 14059.

8. GRUPO MINERA BARRA PACIFICO, S.A.P.I. DE C.V., Leon, Guanajuato, Mexico; Organization Established Date 08 Feb 2021; Organization Type: Mining and Quarrying; Folio Mercantil No. N–2021024215 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

9. INTERNATIONAL REALTY & MAINTENANCE, S.A. DE C.V. (a.k.a. INTERNATIONAL REALTY AND MAINTENANCE, S.A. DE C.V.), Puerto Vallarta, Jalisco, Mexico; Organization Established Date 15 Oct 2016; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. N–2016030303 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

10. MEGA COMERCIAL FERRELECTRICA, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Type: Non-specialized wholesale trade; Folio Mercantil No. 40660 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

11. REAL ESTATES & HOLIDAY CITIES, S.A. DE C.V. (a.k.a. REAL ESTATES AND HOLIDAY CITIES, S.A. DE C.V.), Puerto Vallarta, Jalisco, Mexico; Organization Established Date 15 Oct 2016; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. N–2016030106 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

12. SKAIRU, S.A. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 20 Jun 2019; Organization Type: Real estate activities with own or leased property; Folio Mercantil No. N–2019049513 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or

directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Gabriela Del Villar Contreras, a person sanctioned pursuant to E.O. 14059.

13. TERRA MINAS E INVERSIONES DEL PACIFICO, S.A.P.I. DE C.V., Guadalajara, Jalisco, Mexico; Organization Established Date 26 May 2021; Organization Type: Mining and Quarrying; Folio Mercantil No. N–2021047829 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Manuel Alejandro Foubert Cadena, a person sanctioned pursuant to E.O. 14059.

B. On November 30, 2023, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under the relevant sanctions authority listed below.

**Individual**

1. MONTERO PINZON, Julio Cesar (a.k.a. ''EL TARJETAS''), Puerto Vallarta, Jalisco, Mexico; DOB 02 Jun 1982; POB Puerto Vallarta, Jalisco, Mexico; nationality Mexico; Gender Male; C.U.R.P. MOPJ820602HJCNNL05 (Mexico) (individual) [ILLICIT–DRUGS–E.O.].

-to-

MONTERO PINZON, Julio Cesar (a.k.a. HERNANDEZ JIMENEZ, Cesar; a.k.a. VELAZQUEZ BALTAZAR, Luis Armando; a.k.a. ''Comandante Tarjetas''; a.k.a. ''El Chess''; a.k.a. ''El Chino''; a.k.a. ''El Tarjetas''; a.k.a. ''HERNANDEZ JIMENEZ, Francisco''; a.k.a. ''Moreno''), Puerto Vallarta, Jalisco, Mexico; Estero del Cayman, Real Ixtapa, #137–A, Puerto Vallarta, Jalisco, Mexico; DOB 02 Jun 1982; alt. DOB 08 Nov 1982; alt. DOB 25 Aug 1986; alt. DOB 28 Jun 1977; POB Puerto Vallarta, Jalisco, Mexico; alt. POB Amatan, Chiapas, Mexico; nationality Mexico; Gender Male; R.F.C. VEBL860825 (Mexico); C.U.R.P. MOPJ820602HJCNNL05 (Mexico); alt. C.U.R.P. MOPJ821108HJCNNL04 (Mexico); alt. C.U.R.P. VEBL860825HJCLLS05 (Mexico); alt. C.U.R.P. HEJC770628HCSRMS06 (Mexico); Electoral Registry No. GRMRLR82012730M700 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Dated: November 30, 2023.

**Gregory T. Gatjanis,**

*Associate Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2023–26651 Filed 12–4–23; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Funding Opportunity Under Supportive Services for Veteran Families Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of funding availability.

**SUMMARY:** The Department of Veterans Affairs (VA) is announcing the availability of funds for supportive services grants under the Supportive Services for Veteran Families (SSVF) Program. This notice of funding availability (NOFA) contains information concerning the SSVF Program, the renewal and new applicant supportive services grant application processes, and the amount of funding available. Awards made for supportive services grants will fund operations beginning October 1, 2024.

**DATES:** Applications for supportive services grants under the SSVF Program must be received by the SSVF Program Office by 4 p.m. eastern time on February 23, 2024. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submissions of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages or other submission-related problems.

**ADDRESSES:** Information about the application can be downloaded from the SSVF website at *www.va.gov/homeless/ssvf.* Questions may be referred to the SSVF Program Office via email at *SSVF@va.gov.* For detailed SSVF Program information and requirements, see part 62 of title 38, Code of Federal Regulations (38 CFR part 62).

Submission of Application Package: Applicants must submit applications electronically following instructions found at *www.va.gov/homeless/ssvf.* Applications may not be mailed, hand-carried or sent by facsimile (FAX). Applications must be received in the SSVF Program Office by 4 p.m. eastern time on the application deadline date. Application materials must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application package being rejected. See Section II.B. and II.C. of this NOFA for maximum allowable grant amounts.

Technical Assistance: Information regarding how to obtain technical assistance with the preparation of a renewal supportive services grant application is available on the SSVF Program website at *www.va.gov/HOMELESS/SSVF.*

**SUPPLEMENTARY INFORMATION:**

*Funding Opportunity Title:* Supportive Services for Veteran Families Program.

*Announcement Type:* Initial.

*Funding Opportunity Number:* VA–SSVF–103121.

*Catalog of Federal Domestic Assistance Number:* 64.033, VA Supportive Services for Veteran Families Program.

**I. Funding Opportunity Description**

A. *Purpose:* The SSVF Program's purpose is to provide supportive services grants to private non-profit organizations and consumer cooperatives who will coordinate or provide supportive services to very low-income Veteran families who (i) are residing in permanent housing and at risk of becoming homeless, (ii) are homeless and scheduled to become residents of permanent housing within a specified time period or (iii) after exiting permanent housing within a specified time period, are seeking other housing that is responsive to such very low-income Veteran family's needs and preferences.

SSVF delivers services using a housing-first approach that emphasizes permanent housing placement as the primary objective. Housing First is an evidence-based, cost-effective approach to ending homelessness for the most vulnerable and chronically homeless individuals (see *B5_USICH_Housing_First_Checklist.pdf* (*va.gov*).

SSVF prioritizes the delivery of rapid re-housing services to homeless Veteran households. Rapid re-housing is an intervention designed to help individuals and families quickly exit homelessness, return to housing in the community, and avoid homelessness again in the near term. The core components of a rapid re-housing program are housing identification, move-in and rent financial assistance, and rapid re-housing case management and services. These core components represent the minimum that a program must provide to households to be considered a rapid re-housing program. Applicants should familiarize themselves with the Homelessness Prevention and Rapid Re-housing Best Practice Standards found at *www.va.gov/HOMELESS/SSVF.*

B. *Funding Priorities:* The principal goal of this NOFA is to seek entities that have the greatest capacity to end homelessness among Veterans or sustain gains made in ending homelessness among Veterans. Priority will be given to grantees who can demonstrate the adoption of evidence-based practices in their application. Under Priority 1, VA will provide funding to existing grantees who have at least one of the following accreditations: 3-year accreditation from the Commission on Accreditation of

Rehabilitation Facilities (CARF) in Employment and Community Services: Rapid Rehousing and Homeless Prevention standards, a 4-year accreditation in Housing Stabilization and Community Living Services from the Council on Accreditation's (COA) or a 3-year accreditation in The Joint Commission's (JC) Behavioral Health Care: Housing Support Services Standards. Priority 1 applicants must demonstrate that accreditation is active at the date of submission, and accreditation must be maintained throughout the project period and/or funding cycle. Priority 2 includes existing grantees not included in Priority 1 but who have annual awards and are seeking to renew their grants. Existing grantees are SSVF grantees that have a Memorandum of Agreement (MOA) for operations through September 30, 2024.

C. *Definitions:* Part 62 of title 38, Code of Federal Regulations (38 CFR part 62), contains definitions of terms used in the SSVF Program. In addition to the definitions and requirements described in 38 CFR part 62, this NOFA provides additional resources to secure permanent housing. These resources may be provided by the SSVF grantee under 38 CFR 62.34 to assist Veterans in remaining in or obtaining permanent housing. Grantees will be allowed to provide up to the equivalent of 2 months' rent in addition to the security deposit to landlords under 38 CFR 62.34(g) as a resource for any lease of not less than 1 year when necessary to assist a Veteran in remaining in or obtaining permanent housing. The additional funds may be used to facilitate the leasing of rental units to tenants with significant housing barriers. Landlords are less likely to lease to certain groups due to the risk of non-payment of rent or concerns about damage or disruption to their buildings. Tenants with significant housing barriers might include Veterans with poor credit histories and criminal justice involvement that might otherwise disqualify them from obtaining a lease. Veterans with histories of sex offenses are generally considered high-risk tenants by landlords.

Veterans are sometimes reluctant to move into apartments that do not offer any of the comforts typically associated with living independently. The General Housing Stability Assistance, provided under 38 CFR 62.34(e), while offering some funds for bedding and basic kitchen supplies, leaves significant needs unaddressed. Therefore, grantees also will be allowed to provide up to $1,000 to Veteran families for miscellaneous move-in expenses under 38 CFR 62.34(g), to encourage them to obtain permanent housing with a lease of not less than 1 year. These funds are to be provided to assist Veterans through accounts established at local merchants, such as grocery stores and retailers, in the enrolled Veteran's name. These items could include, but are not limited to, food, furniture, household items, electronics (including televisions) or other items typically associated with independent living in permanent housing. Furthermore, internet can now be considered as utilities as the definition for financial assistance as utility payments under 38 CFR 62.34(b) is expected with this NOFA to include these charges. Access to the internet is an essential component of the modern economy, comparable to utilities. Veterans without such access are put at a disadvantage in finding and applying for work opportunities, purchasing needed consumer goods at the lowest possible cost and communicating through email and other forms of social media.

In addition to the definitions and requirements described in 38 CFR part 62, this NOFA provides further clarification in this paragraph on the use of *Emergency Housing Assistance* (EHA). EHA may be provided by the SSVF grantee under 38 CFR 62.34(f) to offer transition in place when a permanent housing voucher, such as is offered through the Department of Housing and Urban Development's (HUD) Section 8 program, is available from any source, but access to the permanent housing voucher is pending completion of the housing inspection and administrative processes necessary for leasing. In such circumstances, the EHA payment cannot exceed what would otherwise be paid when the voucher is used. EHA also may be used as part of Rapid Resolution, also known as a diversion or problem-solving service, that helps Veteran households avoid entry into homelessness through placements with family or friends. EHA may also be used as an outreach tool to engage and offer housing to unsheltered homeless Veterans with significant housing needs who refuse to access traditional emergency shelter services in the community.

D. *Approach:* Respondents to this NOFA should base their proposals and applications on the current requirements of part 62. Grantees will be expected to leverage supportive services grant funds to enhance the housing stability of very low-income Veteran families who are occupying permanent housing. In doing so, grantees are required to establish relationships with local community resources. Therefore, agencies must work through coordinated partnerships built either through formal agreements or the informal working relationships commonly found among successful social service providers.

Through this NOFA, grantees can pay fees related to securing a lease of at least 1 year. In addition, as noted previously herein, Veterans are sometimes reluctant to move into apartments that do not offer any of the comforts typically associated with living independently. Pursuant to this NOFA, grantees would be able to use funds for miscellaneous expenses associated with moving into a new home. Moreover, nationally, the median average rental unit has increased in price by 28% through September 2023. Furthermore, service-connected Veterans with high levels of disability may have incomes that exceed the current SSVF income threshold of 50% of the area median income. These Veterans, some of the most vulnerable served by the VA, can be left ineligible for critically needed SSVF services. As a result, VA is invoking the provision in 38 U.S.C. 2044(f)(6)(C) and 38 CFR 62.2, allowing VA to establish an income ceiling higher or lower than 50% of the median income for an area if VA determines that such variations are necessary because the area has unusually high or low construction costs, fair market rents (as determined under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f)) or family incomes. Area median income (AMI) is one factor SSVF uses to establish eligibility. A higher income ceiling, as reflected by the AMI, will allow grantees to serve Veterans who have endured significant increases in their housing cost burden, placing them at greater risk for homelessness.

For purposes of this NOFA, grantees will be able to serve Veterans in their communities who have up to 80% of the AMI. HUD–VA Supportive Housing (HUD–VASH) eligibility also has an income of 80% of AMI. Aligning SSVF and HUD–VASH eligibility will allow SSVF grantees' housing navigators to assist Veterans eligible for HUD–VASH as necessary with identifying and obtaining permanent housing. Aligning SSVF and HUD–VASH eligibility will also improve the coordination of care and simplify and standardize eligibility determinations.

Applicants are strongly encouraged to provide letters of support from the Continuums of Care (CoC) in the location where they plan to deliver services, reflecting the applicant's engagement in the CoC's efforts to

coordinate services. A CoC is a community planning entity that organizes and delivers housing and services to meet the needs of people who are homeless as they move to stable housing and maximize self-sufficiency. The CoC includes action steps to end homelessness and prevent a return to homelessness. CoC locations and contact information can be found at *https://www.hudexchange.info/grantees/contacts/?params=%7B%22limit%22%3A20%2C%22sort%22%3A%22%22%2C%22order%22%3A%22%22%2C%22years%22%3A%5B%5D%2C%22searchTerm%22%3A%22%22%2C%22grantees%22%3A%5B%5D%2C%22state%22%3A%22%22%2C%22programs%22%3A%5B3%5D%2C%22coc%22%3Atrue%7D##granteeSearch.*

The CoC's letter of support should note if the applicant is providing assistance to the CoC in building local capacity to build Coordinated Entry Systems (CES) and the value and form of that assistance, whether support is direct funding or staffing. CES requires that providers operating within the CoC's geographic area must also work together to ensure the CoC's coordinated entry process allows for coordinated screening, assessment and referrals (HUD Notice: CPD–17–01). The CoC's letter of support also must describe the applicant's participation in the CoC's community planning efforts. Failure for a Priority 1 or Priority 2 applicant to provide a letter of support from the CoC as described will limit the maximum award to 90% of the award made in the previous fiscal year (FY) as described herein at II.C.7. In addition, any applicant proposing to serve an Indian Tribal area is strongly encouraged to provide a letter of support from the relevant Indian Tribal Government.

The aim of the provision of supportive services is to assist very low-income Veteran families residing in permanent housing to remain stably housed and to rapidly transition those not currently in permanent housing to stable housing. Assistance in obtaining or retaining permanent housing is a fundamental goal of the SSVF Program. SSVF emphasizes the placement of homeless Veteran families who are described in 38 CFR 62.11(b)–(c) as follows:

(b)(1) Is lacking a fixed, regular and adequate nighttime residence, meaning:

(i) That the Veteran family's primary nighttime residence is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned bus or train station, airport or camping ground,

(ii) That the Veteran family is living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing and hotels and motels paid for by charitable organizations or by Federal, State or local government programs for low-income individuals) or

(iii) That the Veteran family is exiting an institution where the Veteran family resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution,

(b)(2) Are at risk to remain in the situation described herein at paragraph (b)(1) of this section but for the grantee's assistance and

(b)(3) Scheduled to become a resident of permanent housing within 90 days pending the location or development of housing suitable for permanent housing or

(c) Has met any of the conditions described herein at paragraph (b)(1) of this section after exiting permanent housing within the previous 90 days to seek other housing that is responsive to the very low-income Veteran family's needs and preferences.

E. *Authority:* Funding available under this NOFA is authorized by 38 U.S.C. 2044. VA implements the SSVF Program through regulations in 38 CFR part 62. Funds made available under this NOFA are subject to the requirements of these regulations.

F. *Requirements for the Use of Supportive Services Grant Funds:* The applicant's request for funding must be consistent with the limitations and uses of supportive services grant funds set forth in 38 CFR part 62 and this NOFA. In accordance with 38 CFR part 62 and this NOFA, the following requirements apply to supportive services grants awarded under this NOFA:

1. Grantees may use a maximum of 10% of supportive services grant funds for administrative costs identified in 38 CFR 62.70(e).

2. Grantees must enroll a minimum of 60% of Veteran households who are literally homeless and qualify under 38 CFR 62.11(b). (NOTE: Grantees may request a waiver to decrease this minimum, as discussed herein at section V.B.3.a.)

3. Grantees are required to have available temporary financial assistance resources that can be paid directly to a third party on behalf of a participant and may be used for childcare, emergency housing assistance, transportation, rental assistance, utility-fee payment assistance, security deposits, utility deposits, moving costs and general housing stability assistance (which includes emergency supplies) and as otherwise stated in 38 CFR 62.33 and 38 CFR 62.34.

4. Grantees are able to provide up to $1,000 supplemental assistance to every Veteran household who obtains a lease of not less than 1 year to cover miscellaneous move-in expenses.

5. Grantees are able to pay landlords up to an amount equal to 2 months' rent for fees related to securing a lease of at least 1 year. This incentive may be provided at lease-up or split up into multiple payments to be paid within the first 90 days of the Veteran being housed.

G. *Guidance for the Use of Supportive Services Grant Funds:* Grantees are expected to demonstrate the adoption of evidence-based practices most likely to prevent and lead to reductions in homelessness. As part of their application, the applying organization's Executive Director must certify on behalf of the agency that they will actively participate in community planning efforts and operate the program in a manner consistent with core concepts found at *https://www.va.gov/homeless/ssvf/ssvf-coreconcepts.* Housing is not contingent on compliance with mandated therapies or services; instead, participants must comply with a standard lease agreement and be provided with the services and supports that are necessary to help them do so successfully. Case management supporting permanent housing should include tenant counseling, mediation with landlords and outreach to landlords.

Grantees must develop plans that will ensure that Veteran participants have the level of income and economic stability needed to remain in permanent housing after the conclusion of the SSVF intervention. Both employment and benefits assistance from VA and non-VA sources represent a significantly underutilized source of income stability for homeless Veterans. Income is not a pre-condition for housing. Case management should include income maximization strategies to ensure households have access to benefits, employment and financial counseling. The complexity of program rules and the stigma some associate with entitlement programs contribute to their lack of use. For this reason, grantees are encouraged to consider strategies that can lead to prompt and successful access to employment and benefits that

are essential to retaining housing. Consistent with 38 CFR 62.30–62.34, grantees are expected to offer the following supportive services: counseling participants about housing; assisting participants in understanding leases; securing utilities; making moving arrangements; providing representative payee services concerning rent and utilities when needed; using health care navigation services to help participants access health and mental health care; providing legal services; and providing mediation and outreach to property owners related to locating or retaining housing. Grantees also may assist participants by providing rental assistance; security or utility deposits; moving costs; emergency housing; or general housing stability assistance; or using other Federal resources, such as the HUD Emergency Solutions Grants Program (ESG) or supportive services grant funds subject to the limitations described in this NOFA and 38 CFR 62.34.

1. As SSVF is a short-term crisis intervention, grantees must develop plans that will produce sufficient income or supports to sustain Veteran participants in permanent housing after the conclusion of the initial SSVF intervention. Grantees must ensure the availability of employment and vocational services either through the direct provision of these services or their availability through formal or informal service agreements. Agreements with Homeless Veteran Reintegration Programs (HVRP) funded by the U.S. Department of Labor are strongly encouraged. For participants unable to work due to disability, income must be established through available benefits programs.

2. Per 38 CFR 62.33, grantees must assist participants in obtaining public benefits. Grantees must screen all participants for eligibility for a broad range of entitlements such as the U.S. Department of Health and Human Services' (HHS) Temporary Assistance for Needy Families, Social Security, the U.S. Department of Agriculture's Supplemental Nutrition Assistance Program, the HHS Low-Income Home Energy Assistance Program, the Earned Income Tax Credit and local General Assistance programs. Grantees are expected to access the Substance Abuse and Mental Health Services Administration's Supplemental Security Income/Social Security Disability Insurance Outreach, Access, and Recovery (SOAR) program directly by training staff and providing the service or subcontracting services to an organization to provide SOAR services. In addition, where available, grantees should access information technology tools to support case managers in their efforts to link participants to benefits.

3. In accordance with 38 CFR 62.33(g), grantees must assist participants in obtaining and coordinating the provision of legal services relevant to issues that interfere with the participants' ability to obtain or retain permanent housing or supportive services. Grantees may provide legal services directly, through contract services, or through referrals to another entity. (NOTE: Information regarding legal services provided may be protected from being released to the grantee or VA under attorney-client privilege, although the grantee must provide sufficient information to demonstrate the frequency and type of service delivered.) Support for legal services can include paying for court filing fees to assist a participant with issues that interfere with the participant's ability to obtain or retain permanent housing or supportive services, including issues that affect the participant's employability and financial security. Grantees (in addition to employees and members of grantees) may represent participants before VA with respect to a claim for VA benefits, but only if they are recognized for that purpose pursuant to 38 U.S.C. chapter 59. Further, the individual providing such representation must be accredited pursuant to 38 U.S.C. chapter 59.

4. Access to mental health and addiction services is required by SSVF; however, grantees cannot fund these services directly through the SSVF grant. Applicants must demonstrate their ability to promote rapid access to and engagement with mental health and addiction services for the Veteran and family members. Grantees are required to hire staff who will provide health care navigation services that aid participants in accessing these health and mental health care services.

5. When serving participants who are residing in permanent housing, the defining question to ask is: ''Would this individual or family be homeless but for this assistance?'' The grantee must use a VA-approved screening tool with criteria that target those most at risk of homelessness. To qualify for SSVF services, a participant who is served under 38 CFR 62.11(a) (homeless prevention) must not have sufficient resources or support networks (*e.g.,* family, friends, faith-based or other social networks) immediately available to prevent them from becoming homeless. To further qualify for services under 38 CFR 62.11(a), the grantee must document that the participant meets at least one of the following conditions for being at risk of homeless under 24 CFR 576.2:

(a) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance,

(b) Is living in the home of another because of economic hardship,

(c) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance,

(d) Lives in a hotel or motel, and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State or local government programs for low-income individuals,

(e) Is exiting a publicly funded institution or system of care (such as a health care facility, a mental health facility or correctional institution) without a stable housing plan or

(f) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved screening tool.

6. SSVF grantees are required to participate in local planning efforts designed to end Veteran homelessness. Grantees may use grant funds to support SSVF involvement in such community planning by sub-contracting with CoCs, when such funding is essential, to create or sustain the development of these data driven plans.

7. When other funds from community resources are not readily available to assist program participants, grantees may choose to use supportive services grants, to the extent described in this NOFA and in 38 CFR 62.33 and 62.34, to provide temporary financial assistance. Such assistance may, subject to the limitations in this NOFA and 38 CFR part 62, be paid directly to a third party on behalf of a participant for childcare; transportation; family emergency housing assistance; rental assistance; utility-fee payment assistance; security or utility deposits; moving costs; and general housing stability assistance as necessary.

8. SSVF requires grantees to offer Rapid Resolution (also known as diversion or problem-solving) services. These services engage Veterans immediately before or after they become homeless and assist them to avoid continued homelessness. These efforts can reduce the trauma and expense associated with extended periods of homelessness, and the strain on the crisis response and affordable housing resources in the community. Through Rapid Resolution, the grantee and the Veteran explore safe, alternative

housing options immediately before or quickly after they become homeless. Rapid Resolution can identify an immediate safe place to stay within the Veteran's network of family, friends or other social networks. All Veterans requesting SSVF services should have a Rapid Resolution screening and if not appropriate for Rapid Resolution grantees should then assess the Veteran for other SSVF services. More information about Rapid Resolution can be found at *www.va.gov/homeless/ssvf.*

**II. Award Information**

A. *Overview:* This NOFA announces the availability of funds for supportive services grants under the SSVF Program and pertains to proposals for the renewal of existing supportive services grant programs.

B. *Funding:* The funding priorities for this NOFA are as follows.

1. Priority 1. Under Priority 1, VA will provide funding to existing grantees who have at least one of the following accreditations: 3-year CARF accreditations in Employment and Community Services: Rapid Rehousing and Homeless Prevention standards, 4-year COA accreditations in Housing Stabilization and Community Living Services or 3-year JC accreditations in Behavioral Health Care: Housing Support Services Standards. Proof of accreditation must be submitted with the application no later than the application due date. The accreditation must be active at the date of submission. Existing grantees previously awarded under Priority 1 with grants scheduled to end by September 30, 2024, must apply using the renewal application. To be eligible for renewal of a supportive services grant, Priority 1 applicants' program must be substantially the same as the program of the grantees' current award. Renewal applications can request funding that is equal to or less than their current annualized amount. If sufficient funding is available, VA may provide an increase of the previous year's award. Any funding increase, if provided, will be based on previous grant funding utilization and enrollment. VA may award a 3-year project period as Priority 1 to those submitting successful applications who remain in good standing and show proof of accreditation.

Grantees previously awarded a 3-year project period that is not scheduled to end by September 30, 2024, cannot submit a renewal application package, under this NOFA but instead are required to submit a letter of intent (LOI) application package by the NOFA deadline indicating their intention of continuing SSVF services in FY 2025. All grantees submitting a LOI must include a letter of support from the CoC (see section II.C.7.) and a proposed budget for FY 2025. Priority 1 grantees submitting a LOI also must submit proof of continued accreditation. Based on the results of audit findings or performance concerns, VA may change grantees previously awarded funds as Priority 1 grantees into Priority 2 grantees at renewal. The reprioritized grantees would then be required to submit a renewal application for the FY 2026 grant year.

2. Priority 2. Priority 2 includes all other existing grantees seeking to renew their annual grant awards. Priority 2 applicants must apply using the renewal application. To be eligible for renewal of a supportive services grant, Priority 2 applicants' program must be substantially the same as the program of the grantees' current grant award. Renewal applications can request funding that is equal to or less than their current annualized award. If sufficient funding is available, VA may provide an increase of the previous year's award. Any funding increase, if provided, will be based on previous grant funding utilization and enrollment.

C. *Allocation of Funds:* Funding will be awarded under this NOFA to existing grantees for a 1-year project period (Priority 2) or a 3-year project period (Priority 1) beginning October 1, 2024. Priority 1 grantees who are awarded a 3-year project period will be funded for 1-year and given the option to submit a LOI to request to continue funding for each additional year. The following requirements apply to supportive services grants awarded under this NOFA:

1. In response to this NOFA, only existing grantees can apply as Priority 1 or Priority 2 applicants.

2. Priority 1 and Priority 2 renewal grant requests cannot exceed the current award.

3. If a Priority 1 or 2 applicant is not renewed, all existing SSVF grants made to the non-renewed grantee, including awards made to support 62.34(a), will be discontinued on September 30, 2024.

4. If a grantee failed to use any previously awarded funds or had unspent funds returned to VA, VA may elect to limit the renewal award to the amount of funds used in the previous fiscal year or in the current fiscal year less the money swept.

5. If, during the course of the grant year, VA determines that grantee spending is not meeting the following minimum percentage milestones, VA may elect to recoup projected unused funds and reprogram such funds to provide supportive services in areas with higher need. Should VA elect to recoup unspent funds, reductions in available grant funds would take place the first business day following the end of the quarter. VA may elect to recoup funds under the following circumstances:

(a) By the end of the first quarter (December 31, 2024) of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds are less than an amount equal to 15% of total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not exceed 35% of the total supportive services grant award.)

(b) By the end of the second quarter (March 31, 2025) of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds are less than an amount equal to 40% of total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not exceed 60% of the total supportive services grant award.)

(c) By the end of the third quarter (June 30, 2025) of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds are less than an amount equal to 65% of total supportive services grant award. (During this same period, the grantee's cumulative requests for supportive services grant funds may not exceed 80% of the total supportive services grant award).

6. Priority 1 and Priority 2 applicants who fail to provide a letter of support from at least one of the CoCs they plan to serve will be eligible for renewal funding at a level no greater than 90% of their previous award. Applicants are responsible for determining who in each serviced CoC is authorized to provide such letters of support. Existing Priority 1 grantees operating under a 3-year project period that are only required to submit a LOI application package in response to this NOFA must also submit a letter of support from at least one of CoC's they plan to serve. The letter of support should include the following information described herein at 6a and b of this section. Applicants may seek an exception to this requirement if they submit a letter from the CoC stating that by policy they cannot provide a letter of support.

To meet this requirement and allow the applicant to be eligible for full funding, letters must include:

(a) A detailed description of the applicant's participation in the CoC's Coordinated Entry process or planning activities and overall community planning efforts (for example, confirmation of applic'nt's active participation in planning coordinated entry; commitment to participating in coordinated entry; hours spent on CoC-sponsored committee or workgroup assignments; and names of said committees or workgroups).

(b) The applic'nt's contribution to the 'oC's coordinated entry process capacity building efforts, detailing the specific nature of this contribution (for example, the hours of staff time and/or the amount of funding provided), if such SSVF capacity has been requested by the CoC or otherwise has shown to be of value to the CoC.

7. Should additional funding become available over the course of the grant term from funds recouped under the Award Information section of this Notice, from funds that are voluntarily returned by grantees, from funds that become available due to a grant termination or from other funds still available for grant awards, VA may elect to offer these funds to grantees in areas where demand has exceeded available SSVF resources. Additional funds will be provided to the highest scoring grantee in the selected area who is in compliance with their grant agreement and has the capacity to use the additional funds.

D. *Supportive Services Grant Award Period:* Priority 2 grants are made for a 1-year period. Some grantees may be eligible to apply as Priority 1 and could be selected for an award with the option to continue funding each year for up to three years, if they meet the criteria described herein at section VI.C.6. Grant renewals are eligible to be renewed subject to the availability of funding.

**III. Eligibility Information**

A. *Eligible Applicants:* Only eligible entities, as defined in 38 U.S.C. 2044(f), who are existing grantees can apply in response to this NOFA.

B. *Cost Sharing or Matching:* None.

**IV. Application and Submission Information**

A. *Obtaining an Application Package:* Applications are located at *www.va.gov/homeless/ssvf.* Any questions regarding this process may be referred to the SSVF Program Office via email at *SSVF@va.gov.* For detailed SSVF Program information and requirements, see 38 CFR part 62.

B. *Content and Form of Application:* Applicants must submit applications electronically following instructions found at *www.va.gov/homeless/ssvf.*

C. *Submission Dates and Times:* Applications for supportive services grants under the SSVF Program must be received by the SSVF Program Office by 4 p.m. Eastern Time on February 23, 2024. Awards made for supportive services grants will fund operations beginning October 1, 2024. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. In addition, in the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages, or other delivery-related problems.

D. *Funding Restrictions:* Funding will be awarded for existing supportive services grants under this NOFA depending on funding availability. Priority 1 and Priority 2 applicants should fill out separate applications for each supportive services funding request. Priority 1 and Priority 2 applicants must use applications designated for renewal applicants. Funding will be awarded under this NOFA to existing grantees beginning October 1, 2024.

1. Funding used for staff education and training cannot exceed 1% of the overall program grant award. This limitation does not include the cost to attend VA mandated training. All training costs must be directly related to the provision of services to homeless Veterans and their families.

2. Expenses related to maintaining accreditation are allowable. Grantees are allowed to include expenses for seeking initial accreditation only once in a 5-year period. The expenses to renew full accreditation are allowed and are based on the schedule of the accrediting agency: for example, every 3 years for CARF and every 4 years for COA. Expenses related to the renewal of less than full accreditation are not allowed.

E. *Other Submission Requirements:*

1. Existing applicants applying for Priority 1 or Priority 2 grants may apply only as renewal applicants using the application designed for renewal grants.

2. At the discretion of VA, multiple grant proposals submitted by the same lead agency may be combined into a single grant award if the proposals provide services to contiguous areas.

3. Additional supportive services grant application requirements are specified in the application package. Submission of an incorrect or incomplete application package will result in the application being rejected during threshold review. The application packages must contain all required forms and certifications. Selections will be made based on criteria described in 38 CFR part 62 and this NOFA. Applicants and grantees will be notified of any additional information needed to confirm or clarify information provided in the application and the deadline by which to submit such information. Applicants must submit applications electronically. Applications may not be mailed, hand carried or faxed.

**V. Application Review Information**

A. *Criteria:*

1. VA will screen all applications to identify those that meet the threshold requirements described in 38 CFR 62.21.

2. VA will use the criteria described in 38 CFR 62.24 to score grantees applying for renewal of a supportive services grant.

B. *Review and Selection Process:* VA will review all supportive services grant applications in response to this NOFA according to the following steps:

1. LOI applications that meet threshold requirements described in 38 CFR 62.21 will be offered funding.

2. Score all renewal applications that meet the threshold requirements described in 38 CFR 62.21.

3. Rank those renewal applications that score at least 75 cumulative points and receive at least 1 point under each of the categories identified for renewal applicants in 38 CFR 62.24. The applications will be ranked in order from highest to lowest scores in accordance with 38 CFR 62.25 for renewal applicants.

4. VA will use the ranked scores of renewal applications as the primary basis for selection. However, VA also will use the following considerations in 38 CFR 62.23(d) to select applicants for funding:

(a) Give preference to applications that provide or coordinate the provision of supportive services for very low-income Veteran families transitioning from homelessness to permanent housing. Consistent with this preference applicants are required to enroll no less than 60% of participants who are homeless as defined in 38 CFR 62.11(b) and (c). Rural areas and tribal areas are exempt from this requirement in areas defined as rural (*https://www.hudexchange.info/programs/rhed/#:~:text=HUD%20defines%20rural%20in%20three,in%20a%20Metropolitan%20Statistical%20Area*). Other areas may seek waivers to this 60% requirement when grantees can demonstrate significant local progress towards eliminating homelessness in the target service area. Waiver requests must include data from authoritative sources such as point-in-time counts and by-name-lists indicating that a community has made substantial enough progress on reducing homelessness that it can shift additional resources to prevention. Waiver requests must include an endorsement by the impacted CoC explicitly stating that a shift in resources from rapid re-housing to prevention will not result in an increase in homelessness. Grantees who are exempt or receive waivers to this 60% requirement must still enroll no less than 40% of all participants who are homeless as defined in 38 CFR 62.11 (b) and (c).

(b) To the extent practicable, ensure that supportive services grants are equitably distributed across geographic regions, including rural communities and tribal lands. This equitable distribution criteria will be used to ensure that SSVF resources are provided to those communities with the highest need as identified by VA's assessment of expected demand and available resources to meet that demand.

5. Subject to the considerations noted previously herein at paragraph B.4. VA will fund the highest-ranked applicants for which funding is available.

## VI. Award Administration Information

A. *Award Notices:* Although subject to change, the SSVF Program Office expects to announce grant recipients for all applicants in the fourth quarter of FY 2024 with grants beginning October 1, 2024. Prior to executing a funding agreement, VA will contact the applicants, make known the amount of proposed funding and verify that the applicant is still seeking the funding. Once VA verifies that the applicant is still seeking funding, VA will execute an agreement and make payments to the grant recipient in accordance with 38 CFR part 62 and this NOFA.

B. *Administrative and National Policy Requirements:* As cited in 38 CFR 62.38 SSVF grants cannot be used to fund ineligible activities.

C. *Reporting:* VA places great emphasis on the responsibility and accountability of grantees. As described in 38 CFR 62.63 and 62.71, VA has procedures in place to monitor supportive services provided to participants and outcomes associated with the supportive services provided under the SSVF Program. Applicants should be aware of the following:

1. Upon execution of a supportive services grant agreement with VA, grantees will have a VA regional coordinator assigned by the SSVF Program Office who will provide oversight and monitor supportive services provided to participants.

2. Grantees will be required to enter data into a Homeless Management Information System (HMIS) web-based software application. This data will consist of information on the participants served and types of supportive services provided by grantees. Grantees must treat the data for activities funded by the SSVF Program separate from that of activities funded by other programs. Grantees will be required to work with their HMIS Administrators to export client-level data for activities funded by the SSVF Program to VA on at least a monthly basis. The completeness, timeliness and quality of grantee uploads into HMIS will be factored into the evaluation of their grant performance.

3. VA will complete annual monitoring evaluations of each grantee. Monitoring will also include the submittal of quarterly and annual financial and performance reports by the grantee. The grantee will be expected to demonstrate adherence to the grantee's proposed program as described in the grantee's application. All grantees are subject to audits conducted by VA or its representative. Pursuant to § 62.80, when a grantee fails to comply with the terms, conditions, or standards of the supportive services grant, VA may, on 7-days notice to the grantee, withhold further payment, suspend the supportive services grant, or prohibit the grantee from incurring additional obligations of supportive services grant funds, pending corrective action by the grantee or a decision to terminate. Additionally, grantees who are identified as not meeting performance standards pursuant to § 62.80 are subject to withholding, suspension, deobligation, termination, and recovery of funds by VA.

4. Grantees will be assessed based on their ability to meet critical performance measures. In addition to meeting program requirements defined by the regulations and applicable NOFA(s), grantees will be assessed on their ability to place participants into housing and the housing retention rates of participants served. Higher placement for homeless participants and higher housing retention rates for participants at risk of homelessness are expected for very low-income Veteran families when compared to extremely low-income Veteran families with incomes below 30% of the area median income.

5. Grantees' performance will be assessed based on their consumer satisfaction scores. These scores include the participation rates and satisfaction results of the standardized survey offered to all participant households.

6. Organizations receiving renewal awards that have had ongoing SSVF program operation for at least 1 year (as measured from the start of initial SSVF services until February 10, 2024) may be eligible for a 3-year project period. Grantees meeting outcome goals defined by VA and in substantial compliance with their grant agreements (defined by meeting targets and having no outstanding corrective action plans) and who, in addition, have a 3-year accreditation from either CARF in Employment and Community Services: Rapid Rehousing and Homeless Prevention standards, a 4-year accreditation from COA in Supported Community Living Services, or a 3-year accreditation in The Joint Commission's Behavioral Health Care: Housing Support Services Standards are eligible for a 3-year project period. (NOTE: Multi-year project periods are contingent on funding availability.) If awarded a multiple year renewal, grantees may be eligible for funding increases as defined in NOFAs that correspond to years two and three of their renewal funding. At its discretion, VA may reduce 3-year project periods to a 1-year project period based on previous fiscal year performance concerns or most recent audit results.

## VII. Other Information

A. VA Goals and Objectives for Funds Awarded Under this NOFA: In accordance with 38 CFR 62.24(c), VA will evaluate an applicant's compliance with VA goals and requirements for the SSVF Program. VA goals and requirements include the provision of supportive services designed to enhance the housing stability and independent living skills of very low-income Veteran families occupying permanent housing across geographic regions and program

administration in accordance with all applicable laws, regulations, guidelines, and the SSVF grant agreement. For purposes of this NOFA, VA goals and requirements also include the provision of supportive services designed to rapidly re-house or prevent homelessness among people in the following target populations who also meet all requirements for being part of a very low-income Veteran family occupying permanent housing:

1. Veteran families earning less than 30% of area median income as most recently published by HUD for programs under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f) (*http://www.huduser.org*).

2. Veterans with at least one dependent family member.

3. Veterans returning from Operation Enduring Freedom, Operation Iraqi Freedom or Operation New Dawn.

4. Veteran families located in a community, as defined by HUD's CoC, or a county not currently served by a SSVF grantee.

5. Veteran families located in a community, as defined by HUD's CoC, where the current level of SSVF services is not sufficient to meet demand of Category 2 and 3 (currently homeless) Veteran families.

6. Veteran families located in a rural area.

7. Veteran families located on Indian Tribal Property.

B. Payments of Supportive Services Grant Funds: Grantees will receive payments electronically through the HHS Payment Management System. Grantees will have the ability to request payments as frequently as they choose subject to the following limitations:

1. During the first quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 35% of the total supportive services grant award without written approval by VA.

2. By the end of the second quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 60% of the total supportive services grant award without written approval by VA.

3. By the end of the third quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 80% of the total supportive services grant award without written approval by VA.

4. By the end of the fourth quarter of the grantee's supportive services annualized grant award period, the grantee's cumulative requests for supportive services grant funds may not exceed 100% of the total supportive services grant award.

### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on November 29, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Jeffrey M. Martin,**

*Assistant Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2023–26650 Filed 12–4–23; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0418]**

## Agency Information Collection Activity Under OMB Review: Veterans Affairs Acquisition Regulation (VAAR) 809.507–1 and VAAR Provision 852.209–70

**AGENCY:** Procurement Policy and Warrant Management Service, Office of Procurement Policy, Systems and Oversight, Office of Acquisition and Logistics (OAL), Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain*, select ''Currently under Review—Open for Public Comments'', then search the list for the information collection by Title or ''OMB Control No. 2900–0418.''

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0418'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* 44 U.S.C. 3501–21.

*Title:* Veterans Affairs Acquisition Regulation (VAAR) 809.507–1 and VAAR Provision 852.209–70.

*OMB Control Number:* 2900–0418.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Performance of VA mission requires the use of contractors. VAAR provision 852.209–70, Organizational Conflicts of Interest is to implement section 8141 of the 1989 Department of Defense Appropriation Act, Public Law 100–463, 102 Stat. 2270–47 (1988). VAAR 809.507–1, Solicitation provisions, and VAAR provision 852.209–70, Organizational Conflicts of Interest, requires offerors on solicitations for management support and consulting services to advise, as part of the firm's offer, whether or not award of the contract to the firm might involve a conflict of interest or potential conflict of interest, and, if so, to disclose all relevant facts regarding the conflict or potential conflict. The information is used by the contracting officer to determine whether or not to award a contract to the firm or, if a contract is to be awarded despite a potential conflict, whether or not additional contract terms and conditions are necessary to mitigate the conflict.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 62429 on September 11, 2023 pages 62429 and 62430.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 102 hours.

*Estimated Average Burden per Respondent:* 60 minutes.

*Frequency of Response:* 1 per each solicitation.

*Estimated Number of Respondents:* 102.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2023–26578 Filed 12–4–23; 8:45 am]

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Part II

## Federal Communications Commission

47 CFR Parts 54 and 64
Supporting Survivors of Domestic and Sexual Violence; Lifeline and Link Up Reform Modernization; Final Rule

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 54 and 64

**[WC Docket Nos. 22–238, 11–42, 21–450; FCC 23–96, FR ID 183619]**

## Supporting Survivors of Domestic and Sexual Violence; Lifeline and Link Up Reform Modernization

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission adopted a Report and Order implementing the Safe Connections Act of 2022 (Safe Connections Act or SCA), taking significant steps to improve access to communications services for survivors of domestic abuse and related crimes. The *Report and Order* adopts rules to implement the line separation provisions in the Safe Connections Act that allow survivors to separate a mobile phone line from an abuser. To protect the privacy of calls and texts to hotlines, the *Report and Order* requires covered providers and wireline, fixed wireless, and fixed satellite providers of voice service to: omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission; and maintain internal records of calls and text messages excluded from consumer-facing logs of calls and text messages. The *Report and Order* also designates the Lifeline program to support emergency communications service for survivors that have pursued the line separation process and are experiencing financial hardship.

**DATES:**

*Effective date:* This rule is effective January 14, 2024.

*Compliance date:* Compliance with the revisions to 47 CFR 54.403, 54.405, 54.409, 54.410, 54.1800, and 64.2010 and the addition of 47 CFR 54.424 and 64.6400 through 64.6407 is delayed indefinitely. The FCC will publish a document in the **Federal Register** announcing the compliance date for those sections.

**ADDRESSES:** Federal Communications Commission, 45 L Street SW, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Nicole Ongele, Federal Communications Commission, 45 L Street SW, Washington, DC 20554, or send an email to *PRA@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Melissa Kirkel at *melissa.kirkel@fcc.gov* or 202–418–7958 or Nicholas Page at *nicholas.page@fcc.gov* or 202–418–2783. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele, *Nicole.Ongele@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order in WC Docket Nos. 22–238, 11–42, and 21–450, FCC 23–96, adopted on November 15, 2023, and released on November 16, 2023. The full text of the document is available on the Commission's website at *https://docs.fcc.gov/public/attachments/FCC-23-96A1.pdf*. To request materials in accessible formats for people with disabilities (*e.g.,* braille, large print, electronic files, audio format, etc.), send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice).

Compliance with the rule changes adopted in the *Report and Order,* except for § 64.6408, shall not be required until the later of: (i) six months after the effective date of the *Report and Order*; or (ii) after the Office of Management and Budget (OMB) completes review of any information collection requirements associated with the *Report and Order* that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. With respect to covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service that are not small service providers, compliance with 47 CFR 64.6408(a) shall be required December 5, 2024. In the event the Wireline Competition Bureau has not released the database download file specification by April 5, 2024, or in the event the Wireline Competition Bureau has not announced that the database administrator has made the initial database download file available for testing by October 7, 2024, the compliance deadline shall be extended consistent with the delay, and the Wireline Competition Bureau is delegated authority to revise 47 CFR 64.6408 accordingly. With respect to small service providers that are covered providers or wireline providers of voice service, compliance with 47 CFR 64.6408(a) shall be required June 5, 2025. In the event the Wireline Competition Bureau has not released the database download file specification by October 7, 2024, or in the event the Wireline Competition Bureau has not announced that the database administrator has made the initial database download file available for testing by April 7, 2025, the compliance deadline set forth in this paragraph shall be extended consistent with the delay, and the Wireline Competition Bureau is delegated authority to revise 47 CFR 64.6408 accordingly.

### Paperwork Reduction Act of 1995 Analysis

This document contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the Report and Order as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In the *Report and Order,* we adopt rules, pursuant to Congress's direction in the SCA, that have an impact on all covered providers, including covered providers that are small entities. We impose certain obligations regarding communications with consumers and survivors. We also establish a compliance date six months after the effective date of the *Report and Order,* finding that the countervailing public interest in ensuring survivors have access to line separations regardless of their provider outweighs an extended compliance deadline for small covered providers. Further, staggered compliance deadlines could cause confusion for consumers, and we believe that the SCA's operational and technical infeasibility provisions we codify in our rules will account for differences in the capabilities between large and small covered providers regarding information collection requirements. Regarding protecting the privacy of calls and texts to hotlines, we require covered providers and wireline providers of voice service, within 12 months, subject to certain conditions that may extend this time, (1) omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission; and (2) maintain internal records of calls and text messages

excluded from consumer-facing logs of calls and text messages. Covered providers and wireline providers of voice service that are small service providers are given 18 months, subject to certain conditions that may extend this time, to comply with the same obligations. We received comments requesting that smaller providers be afforded 24 months to comply with such obligations. Recognizing that the SCA contains no language regarding specific timeframes with respect to this obligation, we found that granting smaller providers extra implementation time is appropriate, given that they may face more resource challenges than larger providers in complying with the new rules. We acknowledged that this 18-month period is less than the requested 24-month period, but we found that our 18-month compliance deadline for small providers properly balances the significance of the risks faced by domestic abuse survivors, and the benefits of them being able to call hotlines and seek help without fear of the abuser accessing their call records, with the implementation challenges faced by smaller providers. Third, regarding emergency communications support for survivors, we designate the Lifeline program as the program that will support emergency communications efforts for survivors with financial hardship. This will have an impact on eligible telecommunications carriers designated to provide Lifeline support, but we expect any new regulatory impacts to be minor and consistent with our existing rules. As the SCA has no definition for financial hardship we adopt a definition that is more expansive than the current Lifeline eligibility standards, and we adopt an approach for documenting that financial hardship that allows for self-certification. We also direct the Universal Service Administrative Company (USAC) to prepare for a program evaluation of our efforts to provide emergency communications support to survivors. This evaluation will require surveys of relevant stakeholder groups that USAC will develop under the oversight of the Bureau and the Office of Economics and Analytics.

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

**Synopsis**

**I. Discussion**

*A. Separation of Lines From Shared Mobile Service Contracts*

1. We adopt rules to codify and implement the line separation provisions in the Safe Connections Act of 2022, Public Law 117–223, 116 Stat. 2280. Our rules largely track the statutory language, with key additions and clarifications to address privacy, account security, and fraud detection; operational or technical infeasibility; implementation timelines; and compliance with other laws.

1. Definitions

2. In order to implement the SCA's line separation requirements, we adopt definitions for the terms listed in new section 345 of the Communications Act, as added by the SCA, including ''covered act,'' ''survivor,'' ''abuser,'' ''covered provider,'' ''shared mobile services contract,'' and ''primary account holder.'' We discuss each definition below.

3. *Covered Act.* As proposed in the ''Supporting Survivors of Domestic and Sexual Violence, Lifeline and Link Up Reform and Modernization, Affordable Connectivity Program'' notice of proposed rulemaking (NPRM), 88 FR 15558 (March 13, 2023) (*Safe Connections NPRM*), we define ''covered act'' as conduct that constitutes (1) a crime described in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)), including, but not limited to, domestic violence, dating violence, sexual assault, stalking, and sex trafficking; (2) an act or practice described in paragraph (11) or (12) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102) (relating to severe forms of trafficking in persons and sex trafficking, respectively); or (3) an act under State law, Tribal law, or the Uniform Code of Military Justice that is similar to an offense described in clause (1) or (2) of this paragraph.

4. As we noted in the *Safe Connections NPRM,* this definition is identical to the statutory definition, except that we add the phrase ''but not limited to'' in describing the crimes covered by the first clause. Although the SCA defines ''covered act'' as ''a crime described'' in section 40002(a) of the Violence Against Women Act ''including domestic violence, dating violence, sexual assault, stalking, and sex trafficking,'' it does not say that *only* those listed crimes may be included. Section 40002(a) of the Violence Against Women Act of 1994 describes a number of additional crimes and abuses beyond those enumerated in the SCA's definition, including abuse in later life, child abuse and neglect, child maltreatment, economic abuse, elder abuse, female genital mutilation or cutting, forced marriage, and technological abuse. We find that the best reading of the definition of ''covered act'' in the SCA includes all crimes listed in section 40002(a); we see no reason why Congress would choose to protect only a subset of survivors of these crimes. We further find that the second clause of the definition of ''covered act'' in the SCA, which identifies specific subsections (''an act or practice *described in paragraph (11) or (12)* of Section 103 of the Trafficking Victims Protection Act of 2000'') also supports our analysis because in contrast, the first clause of the definition of ''covered act'' does not limit the definition to specific subsections of section 40002(a) of the Violence Against Women Act.

5. Consistent with the SCA, we conclude that a criminal conviction or any other determination of a court is not required for conduct to constitute a covered act. The SCA separately addresses the evidence needed to establish that a covered act has been committed or allegedly committed. We address those requirements below.

6. *Survivor.* We track the statutory language and define ''survivor'' as an individual who is not less than 18 years old and either (1) against whom a covered act has been committed or allegedly committed; or (2) who cares for another individual against whom a covered act has been committed or allegedly committed (provided that the individual providing care did not commit or allegedly commit the covered act). Although we share the concerns raised by Asian Pacific Institute on Gender-Based Violence (API–GBV) and the National Domestic Violence Hotline (NDVH) that emancipated minors would not be covered by the statutory definition because they are neither age 18 or older nor likely to be in the care of an individual age 18 or older, the term ''survivor'' is unambiguously defined by the SCA to only include ''individual[s] who [are] not less than 18 years old,'' and we do not believe that the SCA otherwise provides us with the authority to extend the scope of that definition. Regardless, we strongly encourage covered providers to treat legally emancipated minors as though they are survivors if they meet the SCA's criteria but for their age, and offer

them the full scope of protections under the SCA.

7. As we observed in the *Safe Connections NPRM,* the statutory language describing a survivor as an individual ''who cares for another individual'' against whom a covered act has been committed or allegedly committed is broad. We conclude that this phrase should be understood to encompass: (1) any individuals who are part of the same household, as defined in § 54.400 of the Commission's rules (47 CFR 54.400(h)); (2) parents or guardians of minor children even if the parents and children live at different addresses; (3) those who care for another individual by valid court order or power of attorney; and (4) an individual who is the parent, guardian, or caretaker of a person over the age of 18 upon whom an individual is financially or physically dependent. The record generally supports a broad interpretation of the phrase ''who cares for,'' while noting the need to provide clear and certain guidance to providers. We disagree with the NDVH's assertion that our proposed interpretation would have prevented a person who does not live in the same household from claiming survivor status if a covered act were not directly committed against them, but we nonetheless make explicit that we interpret this provision to include those individuals who are the parent, guardian, or caretaker of a person over the age of 18 upon whom an individual is financially or physically dependent (*e.g.,* a non-minor child financially dependent on his or her parents or guardians, but who no longer lives at the same address). We find that this interpretation appropriately balances the needs of survivors to have meaningful access to line separations and clarity for providers for administrability and fraud deterrence.

8. We decline, however, to adopt NDVH's proposal to include emotional care within the meaning of ''care for'' as we find that doing so would be difficult to administer and could raise account security risks. The record does not evince any examples of laws or regulations in which the phrase ''cares for'' is used to connote emotional caring, and as such we have no basis for finding that Congress intended this provision to be interpreted to include such circumstances.

9. We decline to mandate that covered providers establish a process for individuals age 18 or older who are considered in the care of another person to object to a line separation request made on their behalf. We agree with Verizon that an objection process could ''hinder a wireless provider's ability to timely effectuate [a line separation request] within the two-business day period, put the wireless provider in an untenable position of uncertainty as to whether an otherwise valid line separation request should move forward, or both.''

10. *Abuser.* As proposed in the *Safe Connections NPRM,* we define ''abuser'' for purposes of our rules as an individual who has committed or allegedly committed a covered act against (1) an individual who seeks relief under section 345 of the Communications Act and the Commission's implementing rules; or (2) an individual in the care of an individual who seeks relief under section 345 of the Communications Act and the Commission's implementing rules, mirroring the substance of the SCA. No commenters objected to our proposed definition. As we explained in the *Safe Connections NPRM,* we do not intend our definition to serve as independent evidence of, or establish legal liability in regards to, any alleged crime or act of abuse, and adopt this definition only for purposes of implementing the SCA.

11. *Covered Provider.* Consistent with the SCA, we define ''covered provider'' as a provider of ''a private mobile service or commercial mobile service, as those terms are defined in 47 U.S.C. 332(d).'' No commenters objected to the *Safe Connections NPRM*'s proposal to adopt such a definition. Section 332(d) defines ''commercial mobile service'' as ''any mobile service (as defined in [47 U.S.C. 153]) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission,'' and defines ''private mobile service'' as ''any mobile service (as defined in [47 U.S.C. 153]) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.'' We find that the line separation obligations apply to all providers of commercial mobile service or private mobile service, as the Commission might interpret and apply those definitions, regardless of the underlying technology used to provide the service (*e.g.,* whether provided through land, mobile, or satellite stations).

12. Consistent with the Commission's proposal, we conclude that covered providers include both facilities-based mobile network operators and resellers/mobile virtual network operators (MVNOs). No commenters objected to this proposal, and several concurred. The record indicates that for some MVNOs, the underlying facilities-based provider may have control over some parts of, or all of, the systems and infrastructure necessary to effectuate line separations. Therefore, we find that to the extent that an MVNO relies upon an underlying facilities-based provider to effectuate line separations, the MVNO should fulfill its obligations under the SCA and our rules through its contractual relationship with the underlying facilities-based provider and may satisfy its obligations by utilizing the same procedures and processes the facilities-based provider makes available to its own customers. However, to the extent an MVNO controls any facilities or systems (for example, customer care or billing), the obligations imposed by the SCA fall entirely upon the MVNO and not the underlying facilities-based provider.

13. Additionally, we conclude that the statutory definition of ''covered provider'' includes a provider of mobile broadband-only or mobile text service that does not also offer mobile voice service, if such provider assigns a telephone number to a device. Because the SCA defines a ''covered provider'' to include any provider offering private mobile service or commercial mobile service, we conclude that providers offering data-only mobile service or text-only mobile services (*i.e.,* no voice services) are ''covered providers.'' We therefore disagree with National Lifeline Association's suggestion that mobile broadband providers who do not offer mobile voice service should not be considered covered providers, as such providers are statutorily covered by the SCA as providers of private mobile service.

14. *Shared Mobile Service Contract.* Consistent with the Commission's proposal in the *Safe Connections NPRM,* we define ''shared mobile service contract'' as a mobile service contract for an account that includes not less than two lines of service and does not include enterprise services offered by a covered provider, mirroring the definition set forth in the SCA, except that we interpret ''2 consumers'' to mean ''two lines of service.'' As the Commission explained in the *Safe Connections NPRM,* ''[i]t is our understanding that mobile service contracts are typically structured around the number of *lines of service* associated with an account rather than the number of *consumers*.'' As a result of this contract structure, providers may not have information about any users other than the primary account holder and are therefore unlikely to be able to

determine whether an account is a shared mobile service contract (*i.e.,* has two or more consumers). Our interpretation, however, resolves this issue without requiring providers to collect additional information about each user of a multi-line account, and the record supports our approach. CTIA—The Wireless Association (CTIA) commented that our definition ''will help enable program success because it generally aligns with providers' customer service and billing systems'' and that ''adopting a definition focused on 'lines of service' rather than 'consumers' will avoid impediments to survivors' ability to obtain line separations,'' particularly when providers do not know the identity of each consumer associated with an account. Notably, there were no objections to this proposed definition in the record. Furthermore, we find that the operational language of the SCA supports our interpretation, as it requires providers to separate particular lines rather than particular consumers from shared mobile service contracts. Consistent with the tentative conclusion in the *Safe Connections NPRM,* we also find that ''shared mobile service contract'' includes both prepaid and post-paid mobile service contracts. This tentative conclusion was also unopposed and supported by CTIA.

15. We also conclude that a ''line of service'' under a shared mobile service contract is one that is associated with a telephone number, even if that line of service does not include voice services, and includes all of the mobile services associated with that line under the shared mobile service contract, regardless of classification, including voice, text, and data services. There is nothing in the statutory text to suggest that Congress intended to permit survivors to separate only certain services associated with their line but not others. Each service—voice, text, or data—could play a vital role in addressing survivors' communications needs. For example, although a device may lack voice service or capability over commercial mobile radio service, if a phone number is associated with the device, a survivor may use the number with certain over-the-top (OTT) services to send and receive messages or make voice calls by utilizing Voice over internet Protocol (VoIP) technology using data services or data messaging services. Such OTT services may include, for example, applications like WhatsApp, Signal, Messenger, and Telegram. Permitting separation of such lines may help avoid complications that could arise from disassociating with an existing number for these services. Had Congress wanted to limit line separations to only those lines with voice service, it could have done so explicitly in the statutory text. Congress, however, noted that ''perpetrators of violence and abuse increasingly use technological and communications *tools* to exercise control over, monitor, and abuse their victims.'' Clearly, Congress recognized that abusers might try to exercise control over survivors not only by limiting access to or monitoring devices with voice services but also by controlling other technological and communications tools. Because Congress sought to promote ''reliable communications tools to maintain essential connections with family, social safety networks, employers, and support services,'' we see no reason to limit the definition of ''line of service'' to only those lines with voice service when so doing could impede a survivor's access to certain devices and hamper their ability to gain support and services they need.

16. We disagree with Verizon's assertion that ''it is far from clear that Congress intended certain other devices,'' such as tablets with no mobile capability, which only ''nominally'' have a line associated with a customer account, to be covered by the SCA. Denying a survivor the ability to separate a line simply because it is ''nominally'' associated with a device could allow an abuser to maintain control over or monitor the line and the device associated with line and inhibit a survivor's ability to break free from an abusive situation. For example, a survivor may want to separate a line for a device in order to protect his or her location information from an abuser with access to the shared mobile account information. Had Congress wanted to limit line separations in the manner Verizon suggests, Congress could have explicitly done so. However, Congress defined a shared mobile service contract as a mobile service contract that includes not less than two ''consumers''—it did not in any way cabin ''consumer'' to a particular type of mobile service. Therefore, rather than ''being far from clear,'' it would seem counter to congressional intent to disallow a survivor's line separation request because the line at issue is only ''nominally'' associated with a device.

17. We also disagree with Verizon's assertion that covered providers are not statutorily required to (but may voluntarily) separate more than one line per survivor on the basis that Congress intended to limit separations to one line per survivor because ''the statute uses the term 'line' in the singular, not plural.'' As an initial matter, we read the statutory language in subsection (b) as framing the process to address each discrete line separation request, which grammatically requires the use of ''line'' in the singular, and in no way limits the number of lines for which a survivor may seek separation. Furthermore, limiting a survivor to one line separation request could potentially allow an abuser to maintain control over or monitor the survivor's other lines (or devices connected to other lines) that remain on the shared contract. We believe this would be contrary to Congress's goals, particularly of helping survivors establish ''independent access to a wireless phone plan.'' We also believe that had Congress intended to allow only one line separation per survivor (and one line per each individual in the care of a survivor), it would have made this limitation clear in the text. For example, instead of using the term ''the line,'' Congress could have said that a provider must ''separate *one* line of the survivor, and *one* line of any individual in the care of the survivor.'' Alternatively, Congress could have expressly limited the number of separations by stating that ''a survivor is entitled to one line separation for the survivor and one line separation for each individual in the care of the survivor.'' Moreover, the statute uses the exact same term ''the line'' when discussing the separation of an abuser's line as it does when discussing the separation of a survivor's line. Accepting Verizon's statutory interpretation would mean that a survivor is limited to separating only one line of the abuser's from the shared account. We do not believe that Congress intended to limit a survivor's ability to completely remove an abuser from a shared mobile service contract when so doing would likely impair the survivor's ability to establish independent wireless communications and leave the abusive situation. For all these reasons, we disagree with Verizon's assertion and conclude that covered providers must separate multiple lines, when applicable.

18. The SCA's definition of ''shared mobile service contract'' explicitly excludes ''enterprise services.'' Consistent with the Commission's proposal in the *Safe Connections NPRM,* we conclude that enterprise services are those products or services that are not ordinarily available to mass market customers and are primarily offered to entities to support and manage business operations, which may provide greater security, integration, support, or other features than are

ordinarily available to mass market customers, and excludes services marketed and sold on a standardized basis to residential customers and small businesses. Our conclusion is consistent with the Commission's past findings that mass market services are those that are generally ''marketed and sold on a standardized basis to residential customers [and] small businesses'' whereas enterprise services are ''typically offered to larger organizations through customized or individually negotiated arrangements.''

19. Although we appreciate industry concerns over fraud, we decline to create a presumption that wireless accounts listing a business entity as the primary account holder are ''enterprise'' accounts. We find the concerns of the NCTA—The internet & Television Association (NCTA) that business accounts will be greater targets for fraud without a presumption that all accounts with a business listed as the primary account holder are enterprise accounts or a presumption that any account for which a party has subscribed to a ''business wireless service'' is an enterprise account to be overstated. The SCA includes adequate safeguards against the type of potential enterprise account fraud raised by NCTA by requiring survivors to submit documentation along with a line separation request demonstrating that an ''abuser'' who uses a line under the shared mobile service contract has committed or allegedly committed a covered act against the survivor (*i.e.,* the person requesting the line separation) and an affidavit that the survivor is the user of the specific line. In practical terms, we expect that it would be challenging for a bad actor to make this required showing where the account holder is a business, and not an individual, unless the abuser's name is also the business name on the account. We believe this required showing will minimize the potential for fraud on business accounts. As such, we decline to adopt the CTIA and NCTA suggested presumptions.

20. *Primary Account Holder.* Finally, as proposed in the *Safe Connections NPRM,* we define ''primary account holder'' as ''an individual who is a party to a mobile service contract with a covered provider,'' mirroring the definition in the SCA. While no commenters opposed this proposal, Verizon noted that ''accounts typically have one named account owner,'' and explained that ''the possibility that 'more than a single individual [may be] a party to a mobile service contract' should not affect how the SCA is implemented in practice.''' As such, we see no need to depart from the statutory definition of primary account holder.

2. Submission of Line Separation Requests

21. In this section, we adopt rules to clarify the requirements for submission of a line separation request under section 345 of the Communications Act. We largely codify the requirements set out in the SCA for how survivors submit line separation requests while adopting some measures that clarify those requirements pursuant to the SCA's command that we consider various factors when enacting regulations for the line separation requirement. In particular, the SCA requires the Commission to consider, among other things, privacy protections; account security and fraud detection; the requirements for remote submission of line separation requests, including submission of verification information; feasibility of remote options for small covered providers; compliance with customer proprietary network information (CPNI) requirements; and ensuring covered providers have the necessary account information to comply with the SCA and our rules. Our aim is to maximize survivors' ability to obtain line separations by ensuring that covered providers have clear direction on their obligations related to the submission of line separation requests. Specifically, we establish requirements regarding the information that survivors must submit to request a line separation and the options providers must give survivors when survivors are making a line separation request, taking into account flexibility for survivors wherever possible. We recognize that there may be some instances in which a survivor may wish to separate an abuser's line but is not able to identify the phone number of the abuser that is associated with the account. We expect that in these instances, covered providers will work with survivors to separate the lines of the survivor and those in the survivor's care from the account.

a. Information Required To Submit Line Separation Requests

22. The rules we adopt concerning the information that survivors must submit to make a line separation request are closely aligned with the requirements set out in the SCA. Specifically, we require that a survivor's line separation request: (1) state that the survivor is requesting relief from the covered provider under section 345 of the Communications Act and our rules; (2) identify each line that should be separated using the phone number associated with the line; (3) regardless of which lines will be separated, identify which line(s) belong to the survivor and state that the survivor is the user of those lines; (4) when a survivor is seeking separation of the line(s) of any individual under the care of the survivor, include an affidavit setting forth that any such individual is in the care of the survivor and is the user of the specific line; (5) when a survivor is seeking separation of the abuser's line, state that the abuser is the user of that specific line; and (6) include documentation that verifies that an individual who uses a line under the shared mobile service contract (*i.e.,* an ''abuser'') has committed or allegedly committed a covered act against the survivor or an individual in the survivor's care. We also require that a line separation request include the name of the survivor and the name of the abuser that is known to the survivor, which may assist covered providers' fraud detection efforts. While some commenters generally expressed that we should ensure the process for requesting line separations is not cumbersome, none specifically addressed our proposed approach. We find that these requirements are consistent with the statutory requirements set forth in the SCA and properly balance the needs of survivors and covered providers' interest in preventing fraudulent line separations.

23. *Affidavits Regarding an Individual in the Care of a Survivor.* When a survivor is seeking a line separation for an individual in the care of a survivor, we require the survivor to submit an affidavit that is signed by the survivor and dated near the time of submission. We decline to adopt Verizon's suggestion, however, that we require such affidavits include the name of the individual being cared for, relationship of the survivor to the cared-for individual, or other information for fraud deterrence purposes. We conclude that requiring information about such individuals raises privacy concerns that are not outweighed by the potential fraud deterrence benefits, particularly given covered providers may not have this information documented in the shared mobile account in the first place. In addition, we agree with the New York City Mayor's Office to End Domestic and Gender-Based Violence (NYC ENDGBV) that there should not be a notarization requirement for affidavits, as such a requirement would be burdensome for survivors because they ''may not have access to a form of identification to verify their identity to a notary and may not have the resources

to find, travel to, or acquire a notary public.''

24. *Documentation Demonstrating Survivor Status.* Consistent with the SCA, we require survivors seeking a line separation to submit documentation that verifies that an individual who uses a line under the shared mobile service contract has committed or allegedly committed a covered act against the survivor or an individual in the survivor's care (*i.e.,* is an ''abuser''). To meet the requirement for demonstrating survivor status, survivors must submit one or more of the eligibility documents prescribed by the SCA: (1) a copy of a signed affidavit from a licensed medical or mental health care provider, licensed military medical or mental health care provider, licensed social worker, victim services provider, licensed military victim services provider, or an employee of a court, acting within the scope of that person's employment; or (2) a copy of a police report, statements provided by police, including military or Tribal police, to magistrates or judges, charging documents, protective or restraining orders, military protective orders, or any other official record that documents the covered act. The documentation provided should clearly indicate a known name for the abuser and the survivor, as well as include some kind of affirmative statement that constitutes an indication that the abuser actually or allegedly committed an act that qualifies as a covered act against the survivor or an individual in the care of a survivor. No commenter opposed our establishment of such requirements. Consistent with the Commission's proposal, we also codify the proviso in the SCA stating that nothing in our rules implementing section 345(c) ''shall affect any law or regulation of a State providing communications protections for survivors (or any similar category of individuals) that has less stringent requirements for providing evidence of a covered act,'' which was unopposed in the record.

25. We interpret the phrase ''any other official record that documents a covered act'' to mean records from any governmental entity, including Tribal governments. We find that this is the best interpretation of this phrase because the documents listed preceding this phrase are records from government entities, and although they are specifically records from law enforcement entities, Congress did not limit the scope of the phrase by qualifying it with ''any other official *law enforcement* record that documents a covered act.'' We also find that this reading is most consistent with the goals of the SCA as it permits survivors to submit official records from other government entities not listed in the statute that might commonly assist survivors, such as child and family service agencies. No commenter urged us to interpret the phrase narrowly, and for the reasons discussed below, we decline to interpret this clause more broadly to allow survivors to submit self-certification of survivor status. We also decline to interpret the ''other official record'' phrase to include records of domestic violence services organizations, or medical or mental health records that describe treatment for injuries, without the need to obtain a signed affidavit from the provider, as the New York State Office for the Prevention of Domestic Violence requests as the first clause of the SCA's documentation provision specifically requires that such records be accompanied by a signed affidavit from the care provider and we find there is no basis for interpreting the ''other official record'' phrase to directly contradict that requirement.

26. Although we are sympathetic to concerns raised in the record that some survivors may have difficulty securing the documents specified by the SCA to demonstrate survivor status, or doing so in a timely manner, we find that there is no valid basis for interpreting the statute to allow self-certification of survivor status. Several commenters urge us to permit self-certification, but none explain how the SCA provides the Commission with the authority to do so, or how doing so is consistent with congressional intent. On the contrary, we find that doing so would contradict congressional intent. As the Commission explained in the *Safe Connections NPRM,* when Congress adopted the SCA, it was not unaware that self-certification could be an option for survivors to demonstrate survivor status, as the Commission had sought comment on allowing self-certification in its *Notice of Inquiry.* We expect that Congress also likely knew of the option for survivors to self-certify their status given that a similar New York law already permitted it as an option. Congress nevertheless excluded self-certification from its detailed list of permissible documentation. Presumably recognizing that the documentation requirements it set were more stringent than those that already existed in New York, Congress included a savings clause in the statute that specifically preserves states' ability to adopt less stringent certification requirements in state laws or regulations. Although EPIC et al. cites this provision as a reason why the Commission should conclude that the list of permitted documentation is non-exhaustive and that self-certification should be permitted, it is precisely because the SCA sets out a list of permitted documentation and preserves states' rights to set less stringent requirements in separate state laws that we conclude the Commission is restricted in its ability to expand the scope of permitted documentation to include self-certification. We likewise conclude that self-certification does not fit into the phrase permitting survivors to submit ''any other official record that documents a covered act,'' given our conclusion that Congress intended that clause to be limited to records created by government entities. We also find that the best reading of ''official record'' is a ''record created by, received by, sanctioned by, or proceeding from an individual acting within their designated capacity,'' which would not include self-certification. For many of the reasons discussed in this paragraph, we also conclude that the SCA does not permit us to allow survivors to submit any other forms of documentation of survivor status besides those already discussed.

27. Next, we do not require that such documentation be dated or that the date be within a certain time period before the survivor submits the line separation request. We agree with API–GBV that we should ''provide flexibility to allow people to disclose victimization or to apply for protections at their own pace, given the risks that survivors face as they plan for their safety.'' We also anticipate that many survivors may have sought assistance years before the effective date of the SCA and our implementing rules, and we do not want to deter those survivors from taking advantage of the new benefit that is available to them or require them to seek assistance again just for the purpose of having newer documentation created. We likewise do not require that the documentation show that the covered act occurred within a certain time period prior to the request. We are cognizant of how difficult it may be for survivors to seek assistance and expect there may be instances where a survivor reported a covered act years ago but has not done so again recently despite ongoing abuse.

28. *Assessing the Authenticity of Documentation.* The record reflects broad agreement from stakeholders that we should not require covered providers to assess the authenticity of the documentation that survivors submit, and therefore we decline to adopt such a requirement. We find this approach is appropriate given concerns that many covered providers may not have the

expertise to accurately evaluate the authenticity of documentation and could mistakenly deny legitimate requests. We conclude, however, that the SCA does not prohibit covered providers from attempting to assess the authenticity of documentation and from denying line separation requests based on a reasonable belief the request is or may be fraudulent, and we therefore permit them to do so. Such authentication might include confirming the documentation is from an entity that actually exists, assessing whether the documentation has identifiers that demonstrate the documentation is actually a record of that entity, and comparing any identifying information in the documentation about the abuser and survivor with information in the covered provider's records to confirm that it matches. However, to protect survivor privacy, we prohibit covered providers from directly contacting entities that created any documentation to confirm its authenticity. To mediate concerns about the accuracy of covered providers' assessments, we emphasize that covered providers must first form a reasonable belief that a request is or may be fraudulent before denying the request, and urge covered providers to consider possible legitimate reasons for why submitted documentation may not pass a provider's standard authentication checks. For example, mismatched identifying information could result from a document's use of nicknames or other names that would not match providers' records. We find that allowing, but not requiring, a covered provider to attempt to authenticate submitted documentation balances the public interests of fraud prevention and ensuring survivors' ability to obtain legitimate line separations. Accordingly, we decline NYC ENDGBV's suggestion to altogether prohibit covered providers from attempting to authenticate documents submitted by survivors.

29. *Assessing the Veracity of Evidence of Survivor Status.* We prohibit covered providers from assessing the veracity of the evidence of survivor status contained within the submitted documents, or relying on third parties to do so. We expect that, in most cases, survivors will not be in a position to control what information other entities include in the documentation to ensure it clearly establishes survivor status. Thus, allowing covered providers to evaluate the truthfulness of the information provided and potentially use it as a basis for denying requests could limit legitimate line separations. We also make clear that the prohibition on assessing the veracity of survivor status evidence means that covered providers may not contact survivors to interrogate them about their experience, which ''can be retraumatizing for survivors,'' particularly since ''providers are likely not trained in trauma-informed engagement.'' The record affirms our belief that many covered providers may not have the expertise to accurately evaluate the veracity of the documentation survivors submit. We find that it would undermine the goals of the SCA if a covered provider denied a line separation based on an incorrect determination about the veracity of the evidence presented. We agree with Verizon and CTIA that the SCA's liability limitation clause provides protections for covered providers if they reasonably rely on the documentation survivors provide to demonstrate survivor status and approve line separation requests that turn out to be fraudulent.

30. *Other Information.* We do not, at this time, require a survivor who is not the primary account holder to submit other information, including passwords, about the account or the primary account holder, as the record does not show that such additional information is needed to address fraud and could be unnecessarily burdensome for survivors. No commenter advocated that we require such information. Rather, consistent with the concern raised in the *Safe Connections NPRM,* Verizon noted that ''survivors may have little if any visibility into account information such as PINs, billing addresses, and primary numbers that an abuser may keep private.'' We do, however, permit a covered provider to request the account number, primary phone number, full or partial address, and PIN or password associated with the account, as long as the covered provider makes clear to the survivor that such information is not required to process the line separation request and that the request will not be denied if the information is not provided or is inaccurate. We acknowledge Verizon's assertion that such information, if available, ''could help a provider to process the [line separation request] more quickly in some cases, and to investigate and remedy transactions that later turn out to have been fraudulent or unauthorized.''

31. *Assistance with Completing Line Separation Requests.* To maximize survivors' ability to pursue line separation requests, we conclude that survivors may rely on assistance from other individuals, including the survivor's designated representative, to prepare and submit line separation requests. We agree with commenters that this approach maximizes survivor self-determination and agency, and that it could be particularly useful for individuals with disabilities or whose first language is not English. No commenter opposed this approach. While the SCA requires covered providers to effectuate line separations after receiving a completed line separation request from a survivor, it also permits survivors to indicate a designated representative for communications regarding line separation requests, which we find signifies Congress's expectation that survivors might rely on other individuals in relation to line separation requests. To ensure that covered providers have the means to identify the individuals who survivors select to assist with line separation requests, we require providers to request the name and relationship to the survivor for individuals who assist survivors and we require those assisting survivors to provide that information, along with a statement that the person assisted the survivor with the line separation request. Providers may use methods that are reasonably designed to confirm the identity of the ''designated representative.'' We expect that any added cost for requiring covered providers to request this information will be negligible.

32. *Confidential Treatment and Secure Disposal of Personal Information.* We adopt our proposal to require a covered provider, including any officer, director, and employee—as well as a covered provider's vendors, agents, or contractors that receive or process line separation requests with the survivor's consent, or as needed to effectuate the request—to treat the fact of the line separation request as well as any documentation or information a survivor submits as part of a line separation request as confidential, and securely dispose of the information not later than 90 days after receiving the information, consistent with the SCA. The record supports adoption of this requirement, including our proposed clarification that a ''vendor,'' as used in the SCA, includes a ''contractor'' who may receive a line separation request in its provision of services to a covered provider, on the basis that this interpretation reflects the business practices of covered providers and will mitigate privacy risks to survivors. We note that covered providers must abide by this requirement even if they are unable to process a line separation request.

33. We conclude that treating the line separation request itself, as well as documentation and information a survivor submits as part of a line separation request, as confidential means not disclosing or permitting access to such information unless subject to a valid court order, except: (1) to the individual survivor submitting the line separation request; (2) to anyone that the survivor specifically designates; (3) to those third parties necessary to effectuate the request (*i.e.,* vendors, contractors, and agents); and (4) to the extent necessary, to the Commission and the Universal Service Administrative Company (USAC) to process emergency communications support through the designated program or address complaints or investigations. We disagree with CTIA that the Commission should not afford protections to survivors (and alleged abusers) from the misuse of their data by law enforcement on the basis that doing so is outside the scope of the SCA and the *Safe Connections NPRM.* The SCA directs the Commission to adopt regulations concerning the line separations requirements, which includes the confidentiality requirements, and thus we find that addressing this issue is within the scope of the SCA. Given concerns expressed by EPIC et al., we find that requiring law enforcement to obtain a court order to access information about a line separation request is a necessary protection for survivors (and alleged abusers). We do not anticipate that this requirement will be burdensome for providers to implement given that they already have a duty to protect the confidentiality of proprietary information of customers, including a duty to prevent access to customer proprietary network information (CPNI) ''[e]xcept as required by law or with the approval of the customer.'' Additionally, requiring a court order prevents covered providers from being placed in a position of having to assess whether a law enforcement official may be misusing their official authority.

34. We limit providers from using, processing, or disclosing the line separation request—or any documentation or information submitted with line separation request—for purposes unrelated to implementing the request, providing services, or otherwise managing the survivor's account. We also conclude that the requirement to ''treat'' information submitted in connection with a line separation request as ''confidential'' prohibits covered providers from using, processing, or disclosing (*e.g.,* to joint-venture partners) such information for marketing purposes.

35. We confirm our tentative conclusion that to the extent that any information a survivor submits as part of a line separation request would be considered CPNI and therefore subject to disclosure to the customer or a designee, the SCA's confidentiality requirement nevertheless requires that such information (along with any information submitted by a survivor that would not be considered CPNI) be treated confidentially and disposed of securely. We conclude that this is the best reading of the SCA's language requiring confidential treatment ''[n]otwithstanding Section 222(c)(2)'' of the Communications Act. EPIC et al. agrees with this reading, and no commenter offered an alternative interpretation. Thus, although section 222(c)(2) normally requires telecommunications carriers to ''disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer,'' when such CPNI is submitted by survivors as part of a line separation request, covered providers must follow the SCA's heightened requirements for confidentiality and secure disposal.

36. We decline to find that the identity of the abuser and the reason for the line separation (*i.e.,* the alleged abuse) should be treated as CPNI for the purpose of protecting the personal information of abusers, as requested by EPIC et al. Neither data element fits logically within the categories of information that constitute CPNI, and it need not for those data to benefit from the SCA's confidential and secure disposal protections, which protect the privacy of both survivors and alleged abusers. The confidentiality obligation itself, that is, requires that such information be protected.

37. To help ensure confidential treatment and secure disposal of information submitted with line separation requests, we also require covered providers to follow data security measures commensurate with the sensitivity of line separation requests, as well as the information and documentation submitted with line separation requests. Specifically, we require covered providers to implement policies and procedures governing confidential treatment and secure disposal of this information, train employees on those policies and procedures, and restrict access to databases storing such information to only those employees who need access to that information. We believe these baseline requirements will create the foundation for covered providers to treat line separation information confidentially and dispose of it securely. We conclude that these requirements will not be burdensome for most covered providers given that all telecommunications carriers and interconnected Voice over internet Protocol (VoIP) providers must already train employees to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers and that we have specific rules governing the protection of CPNI, and we expect that most providers already have data security policies and procedures to limit access to certain information. In all cases, we anticipate that covered providers will only need to modify their practices and systems to include treatment of line separation information.

38. Understanding that covered providers may need flexibility to comply with the confidentiality and disposal requirements, we otherwise decline to prescribe specific measures that covered providers must use to treat information submitted with a line separation request as confidential and securely dispose of it. We conclude, however, that unauthorized disclosure of, or access to, information survivors submit as part of a line separation request will be considered evidence in an investigation by the Commission that a covered provider has not adopted sufficient measures to protect against such disclosure or access. This approach aligns with our expectations for carriers' treatment of CPNI. The SCA's confidentiality and disposal requirements demonstrate that Congress thought the privacy of information related to line separation requests is paramount, and we anticipate that our approach will incentivize covered providers to adopt best practices as they evolve over time to ensure the confidentiality and secure disposal of such information. Such best practices might include encryption, masking, data minimization (*i.e.,* only collecting data necessary for the intended purpose and deleting data when it is no longer necessary), access controls, secure password policies, traffic monitoring, and internal firewalls. Indeed, a covered provider may be able to overcome evidence related to a breach of survivor information if the provider is able to show that it used industry best practices at the time of the breach. We are also concerned that prescribing specific data security practices might result in the rules becoming obsolete over time. We

make clear that the liability protections in the SCA do not shield covered providers, or their vendors, agents, and contractors, from enforcement actions that may result from their failure to adopt adequate practices to treat line separation information as confidential and securely dispose of it. Additionally, we emphasize that covered providers subject to section 222 have an independent responsibility to protect such confidential information and will therefore be subject to potential enforcement action for failures by their vendors, agents, and contractors to adopt sufficient confidentiality and secure disposal measures.

39. We also clarify the limited instances in which a covered provider may retain information about a line separation request beyond the 90-day disposal deadline established by the SCA. First, consistent with the SCA, we permit a covered provider to maintain a record that verifies that a survivor fulfilled the conditions of a line separation request for longer than 90 days, but prohibit providers to retain, as part of this record, the affidavit, documentation of survivor status, or other original records a survivor submits with the request, as that information is deemed confidential and subject to secure disposal within 90 days. Second, we permit a covered provider to retain any confidential record related to the line separation request, including an affidavit and documentation of survivor status, for longer than 90 days upon receipt of a legitimate law enforcement request. In both cases, we require a covered provider to treat the records it retains as confidential, and dispose of such records securely. To be clear, even though the record that verifies that a survivor fulfilled the conditions of a line separation request is not an original record submitted with a request, it must nonetheless be treated as a confidential record. We decline the Boulder Regional Emergency Telephone Service Authority's (BRETSA) suggestion that we require covered providers to deliver a 911 call placed by a survivor over the survivor's separated line with ''some indication to the PSAP [public safety answering point] that the call is from service assigned to an individual escaping an abusive relationship.'' We agree with commenters that such a requirement falls outside the scope of the SCA and our implementing rules.

b. Required Options Covered Providers Must Offer to Survivors

40. We now adopt requirements regarding basic categories of information covered providers must make available to, or request from, survivors when granting a line separation request. These requirements are intended to streamline the line separation process for covered providers and to maximize the simplicity with which survivors can obtain line separations in a timely manner. First, we codify in our rules the SCA's requirement that a covered provider inform the survivor, through remote means, at the time the survivor submits a line separation request, that the provider may contact the survivor, or the survivor's designated representative, to confirm the line separation or inform the survivor if the provider is unable to complete the line separation. As explained in the *Safe Connections NPRM,* we find that this approach will allow survivors to make an informed choice regarding which contact information and manner of communication is best given their particular circumstances. No commenter opposed this approach.

41. Second, for line separation requests submitted by a survivor through remote means, we require covered providers to ''allow the survivor to elect in the manner in which the covered provider may—(i) contact the survivor, or designated representative of the survivor, in response to the request, if necessary; or (ii) notify the survivor, or designated representative of the survivor, of the inability of the covered provider to complete the line separation,'' which mirrors the SCA. We conclude that this requirement simply obligates a covered provider to allow a survivor to select, at the time the survivor submits a line separation request through remote means, the manner the provider must use to communicate with a survivor after the survivor submits the request. Among the communication options offered to the survivor, we require a covered provider to include at least one means of communication that is a ''remote means.'' We also require covered providers to allow survivors to indicate their preferred language for future communications from among those in which the covered provider currently advertises, and deliver any such future communications in the survivor's preferred language if it is one in which the provider currently advertises. Additionally, we require covered providers to ask survivors to provide the appropriate contact information with their requests. We decline Verizon's suggestion that we require a survivor to submit a telephone number and email address with its request for use in contacting the survivor. The SCA permits survivors to select the means that covered providers must use to communicate with them, which may or may not be both phone and email. To prevent covered providers from attempting to contact survivors using any other means, we only require survivors to provide contact information for the means they select, unless it is otherwise necessary to provide documentation of a completed line separation request for Lifeline purposes, as discussed below. We also prohibit providers from engaging in communications that are not directly related to the line separation request, such as marketing and advertising communications that are not related to assisting survivors with understanding and selecting service options. No commenter opposed adoption of these requirements.

42. Third, we require covered providers to allow a survivor submitting a line separation request to indicate their service choices when they are submitting a line separation request. Specifically, we require covered providers to allow a survivor to indicate the service plan a survivor chooses from among all commercially available plans the covered provider offers for which the survivor may be eligible, including any prepaid plans, as well as whether the survivor intends to retain possession (and therefore take financial responsibility) of any device associated with a separated line. API–GBV and the Competitive Carriers Association (CCA) both supported such a requirement, and no commenter opposed it.

43. Fourth, as mandated by the SCA, we require a covered provider to inform the survivor of the existence of the Lifeline program as a source of support for emergency communications for qualifying survivors, and to include a description of who might qualify for the program and how to participate. We require covered providers to provide this information to survivors as part of the line separation request mechanism as we anticipate that having this information may help survivors determine which service plan may suit them best. We require covered providers, at a minimum, to inform survivors that their participation in the Lifeline program and the Affordable Connectivity Program (ACP) based on their status as survivors will be limited to six months unless they can qualify to participate in Lifeline and/or ACP under the programs' general eligibility requirements. We decline to adopt standardized language regarding the content of this communication as we do not find it necessary at this time. We find that our approach provides sufficient guidance to covered providers regarding what information they must

include in their communications. We also require covered providers to allow survivors to indicate whether they intend to apply for emergency communications support through the designated program, if available through the provider.

44. Finally, to the extent that a covered provider cannot operationally or technically effectuate certain types of line separations in all instances, we require a covered provider to identify—in a contemporaneous communication to the survivor—which types of line separations the provider cannot perform and state that it cannot perform those separations due to operational or technical limitations.

3. Requirement To Separate Lines Upon Request

45. We codify the SCA's requirement that, for a shared mobile service contract under which a survivor and abuser each use a line, a covered provider must, not later than two business days after receiving a completed line separation request from a survivor, (1) separate the line(s) of the survivor, and the line(s) of any individual in the care of the survivor, from the shared mobile service contract, or (2) separate the line(s) of the abuser from the shared mobile service contract. We conclude, as proposed, that because the SCA requires covered providers to implement line separation requests from survivors for shared mobile service contracts ''under which the survivor and the abuser each *use a line,*'' neither the abuser nor the survivor must be the primary account holder for a line separation to be effectuated, regardless of whose line is separated from the account. We also find that a person who does not use a line on an account—but is a ''survivor'' under the statute because the person is someone who cares for another individual against whom a covered act has been committed or allegedly committed—would be able to request a line separation because the definition of ''survivor'' allows that person to stand in for the individuals in their care.

46. We acknowledge the seriousness of concerns raised in the records about dangers to survivors from spyware applications or software installed on a survivor's device that could remain after a line separation. We find, however, that regulation of such third-party applications and software is beyond the scope of the SCA. We further note providers' assertions that removal of such applications and software may not be within the control of the covered provider. However, with respect to carrier-branded apps and software on devices that may enable shared mobile plan account owners to track users' devices or provide access to customer information through online accounts, we expect covered providers to take all steps necessary to ensure that such apps and software do not enable an abuser to retain access to information about a survivor's line or device post-separation.

47. Below, we clarify covered providers' obligations under this requirement, and in doing so, we emphasize the importance of survivors' ability to obtain the line separations of their choosing in a timely manner while recognizing the practical challenges that covered providers may face in effectuating those separations.

a. Identity Authentication

48. We first require that covered providers attempt to authenticate, using multiple authentication methods if necessary, that a survivor, or a person in the care of the survivor, requesting a line separation is a user of a specific line or lines, and permit covered providers to deny line separation requests when the survivor cannot be authenticated or the provider has a reasonable belief that the request is or may be fraudulent. Specifically, when the survivor is the primary account holder or a user designated to have account authority by the primary account holder (designated user), we require covered providers to attempt to authenticate survivors just as they would any other primary account holder or designated user. This means that requests coming from primary account holders and designated users must comply with any other Commission rules that apply to authentication of such individuals, including those related to access to CPNI and the Commission's rules adopted to address Subscriber Identity Module (SIM) swap and port-out fraud. When the survivor is not the primary account holder or a designated user, we require covered providers to attempt to authenticate their identity using methods that are reasonably designed to confirm the survivor, or a person in the care of the survivor, is actually a user of the specified line(s) on the account, and that such authentication shall also be sufficient for requesting a SIM change when made in connection with a line separation request. To the extent this requirement differs from other authentication requirements, *see, e.g.,* 47 CFR 64.2010, the line separation authentication requirement we adopt in this document to implement 47 U.S.C. 345 serves as an exception to those other requirements. We agree with CTIA and CCA that providers may need flexibility to authenticate and therefore we decline to specify or otherwise limit the methods that covered providers can use to authenticate the identity of survivors who are not primary account holders. Although we acknowledge that some authentication methods may be less secure than others, the record demonstrates that certain methods, such as verification using phone calls or text messages delivered to a survivor's number or knowledge-based checks using call detail information, may be the only practical means in some instances to authenticate survivors who are not the primary account holder and about whom covered providers have no other information.

49. Our approach balances our twin goals of maximizing survivors' ability to obtain legitimate line separations and of preventing fraud. On this issue, industry commenters agreed that covered providers should be given flexibility on how to authenticate survivors and their ability to deny individuals who cannot be authenticated. Conversely, EPIC et al. asserted that the Commission should prioritize survivors' ability to access and use the line separations process over speculative concerns that the line separations process will be used for fraud. We find that the rule we adopt is sufficiently supported by the record and therefore we disagree with CTIA that it is necessary to find a consensus before establishing authentication requirements. We also find that the authentication requirement preserves account security by helping to prevent fraudulent account takeovers, protects privacy by preventing unauthorized access to account information, and ensures covered providers have the necessary account information to comply with our rules and the SCA, consistent with the issues the SCA requires the Commission to consider when adopting line separation rules.

50. We decline NCTA's request to permit covered providers to call or text lines of those in the care of the survivor that are the subject of the line separation request to confirm that the non-abuser individual ''approves the separation request'' or otherwise ''confirm that the request is valid before approving it.'' NCTA argues that covered providers ''should be permitted to decline to process the line separation request if this verification is not completed (*e.g.,* because the abuser has taken the device associated with the line) and, instead, give the party requesting the separation the option of creating a new account with a new telephone number.'' As an initial matter, the SCA contemplates that a survivor would be able to separate a line even when the abuser is in

possession of the device associated with that line, and therefore we disagree that we should approve of covered providers denying separation requests for those lines in all instances. More significantly, we are concerned that allowing covered providers to attempt verification on other lines may alert abusers about the survivor seeking a line separation at an early stage in the process. This might occur, for example, if the abuser is near to or in possession of the devices associated with those lines, such as if the abuser is with children who are in the care of the survivor while the survivor is elsewhere seeking a separation that includes those children's lines. We therefore find that these potential threats to survivors and those in their care outweigh the potential fraud prevention benefits of NCTA's proposed verification process.

b. Establishing ''Secure Remote Means'' for Line Separation Request Submissions

51. We codify the SCA's requirement that covered providers ''offer a survivor the ability to submit a line separation request . . . through secure remote means that are easily navigable, provided that remote options are commercially available and technically feasible.'' No commenter opposed this requirement, and we elaborate on the various aspects of this requirement below.

52. *Secure Means.* Consistent with the SCA's goals to protect the confidentiality of survivor information, we adopt requirements regarding the secure submission of line separation requests. First, we conclude that any means a covered provider offers survivors to submit a line separation request, including non-remote means, must be secure. Second, we find that, at a minimum, secure means are those that prevent unauthorized disclosure of, or access to, the fact of the line separation request or the information and documentation submitted with the line separation request during the submission process. Third, as with the Commission's CPNI rules and the rules we adopt above for confidential treatment and secure disposal of the records survivors submit to covered providers with a line separation request, we conclude that unauthorized disclosure of, or access to, the fact of the line separation request or the information and documentation submitted with a line separation request will be considered evidence in an investigation by the Commission that a covered provider did not provide a ''secure'' means for submitting the request. We otherwise decline to prescribe specific requirements for what constitutes ''secure'' with respect to the means of submitting line separation requests, but as with our rules governing treatment of line separation records, we expect our approach will incentivize covered providers to adopt best practices for security as they evolve over time. No commenter opposed our adoption of any such requirements.

53. *Remote Means.* Although the SCA does not define what constitutes ''remote means,'' we interpret that phrase in a manner that maximizes survivor flexibility for submitting line separation requests. First, we conclude that a ''remote means'' for submitting a line separation request is a mechanism that does not require the survivor to interact in person with an employee of the covered provider at a physical location. No commenter opposed this interpretation. We agree with API–GBV that this interpretation ''is particularly important for survivors in remote areas, or in communities in which physically going to a single location might jeopardize a survivor's safety or confidentiality.'' As such, requiring survivors to visit a brick and mortar store would not constitute remote means. Conversely, a form on a covered provider's website with the ability to input required information and attach necessary documents would constitute remote means. We also find that submissions via email, a form on a provider's mobile app, a chat feature on a provider's website, interactive voice response (IVR) phone calls, fax, and postal mail would constitute remote means. Additionally, we conclude that a live telephone interaction, text message communication, or video chat with a customer service representative would constitute remote means. We do not intend this list to be exhaustive as there may be other methods currently available or developed in the future that would not require a survivor to interact in person with an employee of a covered provider at a physical location. Furthermore, to maximize survivor choice, we conclude that covered providers can offer survivors means that are not considered remote as long as the provider does not require survivors to use those non-remote means or make it more difficult for survivors to access remote means than to access non-remote means.

54. Second, consistent with API–GBV and NYC ENDGBV's requests, we require covered providers to offer survivors more than one remote means of submitting a line separation request, and encourage them to offer several means. We are concerned that certain remote means may be so obsolete or so novel that they would be difficult for some survivors to access, and that if those means are the only ones a covered provider offers, they would deter survivors from pursuing a line separation. We also anticipate that offering alternative remote means will make line separations more accessible to survivors who may be using different technologies or have different levels of digital literacy. We conclude that when Congress directed covered providers to ''offer a survivor the ability to submit a line separation request . . . through secure remote *means,*'' the word ''means'' in this context is ambiguous as to whether providers must offer one or more than one means. Given this ambiguity, and the lack of the singular article ''a'' before the phrase ''secure means,'' we interpret ''means'' as a plural noun.

55. Third, we conclude that the remote means a covered provider offers must allow survivors to submit any necessary documentation, but we permit providers to offer means that allow or require survivors to initiate a request using one method (such as an IVR phone call) and submit the documentation through another method (such as via email). This approach received support in the record and was otherwise unopposed. Fourth, we require covered providers to accept documentation in any common format, including, for example, pictures of documents or screenshots. We find that this approach will minimize difficulty for survivors seeking line separations.

56. Additionally, consistent with existing statutory and regulatory requirements, we make clear that a covered provider must offer alternative remote means that are accessible by individuals with different types of disabilities. The Accessibility Advocacy Organizations highlight the importance of such a requirement, explaining that such individuals are often at increased risk of domestic violence, and therefore that it is critical that they be able to access the protections afforded by the SCA. We decline, however, to require that covered providers offer direct video calling (DVC) as a means of submitting line separation requests, as the Accessibility Advocacy Organizations request. Although we appreciate that DVC may have benefits for survivors with disabilities who are seeking line separation requests, we decline at this time to impose any specific technology given the wide variety of providers and accessible technologies available. We instead strongly encourage covered providers to offer the ''most accessible and effective services available,'' such as DVC, whenever feasible.

57. *Technically Feasible and Commercially Available Means.* No commenter addressed whether secure remote means for submitting line separation requests are currently ''technically feasible'' and ''commercially available,'' and if not, how long it would take them to be. CTIA noted that the *Safe Connections NPRM* appropriately incorporated into the proposed rules the ''commercial availability'' and ''technical feasibility'' limitations that apply to certain requirements. We observe that the remote means we identify above are commonly used by commercial entities to interact with consumers and there are technological processes available to make each of those means secure. We also anticipate that many, if not all, of these mechanisms can be modified by covered providers to be used for line separation requests. Accordingly, we find that secure remote means for submitting line separation requests are currently both technically feasible and commercially available, and we anticipate that covered providers will be able to update their systems and procedures to implement use of more than one means before the rules go into effect.

58. *Easily Navigable.* We next address how the means to submit line separation requests must be ''easily navigable.'' To give covered providers flexibility and ensure they are positioned to request all the information they need to process line separations in a way that is most suitable for their systems, we decline to prescribe the specific format, process, or form covered providers must use for survivors to submit line separation requests, and instead allow covered providers to develop their own mechanisms. However, consistent with the record, to ensure consistency and predictability for survivors and the individuals and entities that assist them, reduce difficulty for survivors, and give covered providers clarity regarding their obligations, we establish several requirements for the mechanisms that covered providers develop to ensure they are easily navigable for survivors submitting line separation requests. Specifically, we require that the mechanisms: (1) use wording that is simple, clear, and concise; (2) present the information requests in a format that is easy to comprehend and use; (3) generally use the same wording and format on all platforms available for submitting a request; and (4) clearly identify the information and documentation that survivors must include with their requests, including clearly listing what survivors should have on hand when contacting the provider, and allow survivors to easily provide that information. We decline to create or mandate the use of a standardized form as requested by NYC ENDGBV as we find that allowing covered providers the flexibility to develop their own approaches while establishing requirements to ensure those mechanisms are easily navigable better balances providers' expertise with the need to streamline the process for survivors. Nevertheless, we encourage stakeholders to work together to develop such a standardized mechanism, to the extent one would be useful for covered providers.

59. We also require that the means through which a covered provider permits survivors to submit line separation requests must be available in all the languages in which the covered provider currently advertises its services as well as all formats (*e.g.,* large print, braille, etc.) in which the provider makes its service information available to persons with disabilities. We agree with EPIC et al. that a ''lack of meaningful language access can further isolation created by an abuser,'' and conclude that requiring language availability for the means of submitting requests will help alleviate that isolation. We decline, however, to adopt API–GBV's recommendation that covered providers offer ''translated forms and instructions in a minimum of the 10 most commonly used languages in the provider's covered service area, as well as any other languages (if any) that the provider advertises its services in.'' We find that such a requirement would be unreasonably burdensome on covered providers, particularly smaller providers, but we encourage all providers to know the predominant languages used in their respective communities and translate their materials into as many different languages as is feasible. At the same time, because we permit survivors to rely on assistance from designated representatives and others to pursue line separations, we anticipate that survivors who speak languages other than those in which a covered provider advertises its services can seek interpretation assistance if necessary.

c. Processing of Line Separation Requests

60. *Implementing Survivors' Election of Line Separation.* Consistent with the statutory language, we interpret the line separation requirement as granting survivors the flexibility to pursue line separations in the manner that is best for their circumstances. We thus conclude, as proposed, that the SCA gives survivors discretion to request separation from the account of either the line(s) of the survivor (and the line(s) of any individuals in the survivor's care) or the line(s) of the abuser, regardless of whether the survivor is the primary account holder. We decline to prescribe the circumstances in which survivors may pursue each type of line separation, as CTIA and NCTA request. The industry trade groups specifically ask the Commission to dictate that when a survivor is a primary account holder, the abuser's line must be separated from the shared mobile service contract and that covered providers can process such line separations by canceling the abuser's line. NCTA makes a second request that the Commission stipulate that when a survivor is not a primary account holder, their lines (and the lines of individuals in the survivor's care) must be separated from the shared mobile service contract. In both circumstances, the industry groups assert that they are trying to avoid situations where they have to establish new accounts in the name of the abuser, which they say cannot be done without the abuser's knowledge and consent, thereby potentially compromising survivors' safety. NCTA also expresses concern that in instances when an abuser who is the primary account holder is separated from the shared mobile service contract and the survivor becomes the primary account holder, ''the abuser likely would know details about the account such as the PIN or account number that could be used to compromise the survivor's service after the line separation.'' However, NCTA does not explain why the covered provider would not allow the survivor, as the primary account holder, to change the PIN to prevent the abuser from accessing the account or use other measures to prevent the abuser from accessing the account.

61. As an initial matter, we find that the industry groups' requested approaches are contrary to the text of the SCA and disincentivizes covered providers from developing solutions that will allow survivors to obtain the line separations of their choosing, thereby limiting the SCA's benefits to survivors. For the same reasons, we decline to find that covered providers have the discretion to determine whether to separate the line of the abuser or the lines of the survivor (and those in the survivor's care). If Congress had intended to limit the types of line separations a survivor could request in a given circumstance, it could have easily said so. We are particularly unmoved by the suggestion that

Congress intended that survivors who are primary account holders must separate the line of the abuser and that the abuser's line would then be canceled, as this outcome is no different than what primary account holder survivors can achieve now, and would therefore make the SCA's benefit in this regard superfluous. We do not presume to understand all the reasons why a survivor might choose to separate an abuser's line or their lines and the lines of those in their care, but Congress chose not to limit survivors' choices and neither do we.

62. Additionally, while we appreciate the practical challenges of effectuating line separations precisely as survivors request, we anticipate that covered providers will be able to address these situations without compromising survivor safety. For instance, covered providers may be able to create a temporary placeholder account and contact the abuser after the line separation has been completed (and the survivor has been notified) to request consent and the necessary information to establish a permanent account. Because temporarily suspended numbers are not permanently disconnected numbers, they are not ''aging numbers'' under the Commission's rules. Covered providers must ensure that telephone numbers assigned to a user of a shared mobile account and which are the subject of a line separation request remain available to be assigned to the user of that number (*i.e.,* a survivor, an individual in the care of a survivor, or an abuser).

63. Alternatively, covered providers could give survivors advance notice that the provider would need to contact the abuser prior to effectuating the line separation to request the abuser's consent and necessary account information, and survivors could then choose whether to proceed or select another line separation or account change option. Absent these or other solutions that providers may develop, a third option is that covered providers can rely on the operational and technical infeasibility exception established by the SCA and discussed further below. NCTA suggests that the Commission dictating survivors' line separation options is a better approach than allowing covered providers to deny line separations due to operational or technical infeasibility because ''[s]urvivors who chose the incorrect option or required further guidance to complete the separation would be forced to engage in additional communications with the covered provider at a time when it may be difficult or even dangerous for a survivor to be involved in such exchanges.'' While we acknowledge NCTA's concern, we believe that our requirement that a covered provider state in a contemporaneous communication which types of requests it cannot complete due to operational or technical infeasibility should address the concern. We nevertheless strongly encourage covered providers to strive to develop the means to allow survivors to separate lines as they see fit.

64. Verizon argues that ''[i]f a survivor requests that an account owner abuser be removed from an account, in practice this may technically or operationally require the latter to consent to establishment of a new account, undermining Congress's objective of ensuring the line separation is not visible to the abuser,'' and that ''[t]he Safe Connections Act envisions that the wireless provider would create a new account for the survivor(s) in those circumstances.'' We recognize that in situations where the survivor is not the account holder, it is more likely than not that the survivor will elect to establish a new account (rather than separate the line of the abuser from the existing account) because such a choice will delay notice to the abuser, and in some cases may be the only technical or operational solution available for the covered provider. But, contrary to Verizon's claim, the SCA does not contemplate that the line separation will be invisible to the abuser in all cases. Rather, the statute expressly contemplates that the primary account holder, who may be the abuser, may be notified about the line separation. Therefore we disagree with Verizon that the SCA envisions that covered providers would create a new account for survivors who might otherwise seek to separate an abuser who is the primary account holder just so that the separation is not visible to the abuser.

65. We also address the circumstances under which an individual who is ''in the care of'' a survivor may receive a line separation. As proposed, we adopt the same approach for determining who qualifies as ''in the care of'' the survivor for the purposes of line separation requests as we do for who may be considered someone ''who cares for another individual'' in the definition of ''survivor.'' Specifically, we conclude that phrase encompasses: (1) any individuals who are part of the same household, as defined in § 54.400 of the Commission's rules; (2) minor children of parents or guardians who are survivors even if the parents and children live at different addresses; (3) individuals who are cared for by a survivor by valid court order or power of attorney; (4) and a person over the age of 18 who is financially or physically dependent upon a parent, guardian, or caretaker (*e.g.,* a non-minor child financially dependent on his or her parents or guardians, but who no longer lives at the same address). We further find that, unlike the definition of ''survivor,'' for the purposes of line separation requests, an individual ''in the care'' of a survivor need not be someone against whom a covered act has been committed or allegedly committed. As we explained in the *Safe Connections NPRM,* the SCA defines ''survivor'' as including an individual at least 18 years old who ''cares for another individual *against whom a covered act has been committed or allegedly committed,*'' but it requires covered providers to separate the lines of both the survivor and ''*any individual* in the care of the survivor,'' upon request of the survivor. As such, we interpret these provisions to mean that covered providers must separate the lines, upon request, of any individual in the care of a survivor without regard to whether a covered act has been committed or allegedly committed against the individual in the care of the survivor. Some commenters expressed support for our interpretation and none objected.

66. *Timeline for Processing Line Separation Requests.* Recognizing the urgency with which survivors may be seeking line separation requests, we adopt a rule that clarifies the SCA's requirement that covered providers effectuate line separations not later than two business days after receiving a completed line separation request from a survivor. No commenters opposed this approach, although Verizon expressed opposition to a more stringent approach, such as requiring processing ''48 hours after receipt.'' Specifically, we require covered providers to process line separation requests as soon as feasible, but not later than close of business two business days after the day the provider receives a completed request. For example, requests received before midnight at the end of a Monday must be processed no later than close of business on Wednesday. Under our rule, covered providers must take all steps to effectuate line separation requests within the two business day timeframe, including reviewing the request to determine if it is complete and effectuating or rejecting the request. We conclude that our rule is consistent with the text and goals of the SCA. We recognize that in some instances, the two-business day standard we adopt will require the line separation to be

completed within 48 hours, but that will not always be the case. For instance, when submissions are made on Fridays or during the weekend, a carrier will have longer than 48 hours to effectuate the line separation, though we would encourage them to effectuate it sooner whenever possible.

67. We define business days as Monday–Friday, 8 a.m. to 5 p.m., excluding provider holidays, which fulfills requests from industry commenters that we incorporate the same definition for business hours that make up a business day as is used in the Commission's porting rules. Notwithstanding the two-business day requirement, we clarify that our ''rules do not undermine the Safe Connections Act's strong incentives for wireless providers to accommodate [line separation requests].'' Therefore, ''[i]f effectuating [a line separation request] is technically infeasible for a particular provider in two business days, but three days is feasible,'' the covered provider can rely on the technical infeasibility exception to delay completion of the request rather than denying the request and requiring survivors to start the entire process again, as long as the provider notifies the survivor of the status of their request and the expected completion timeline within two business days of receiving the request.

68. We decline to require that covered providers process line separation requests in less than two business days in cases of emergency or extreme hardship for the survivor, as the National Domestic Violence Hotline requests. Although we appreciate that some survivors may experience increased urgency for their line separation requests, we agree with NCTA that Congress was likely aware of the hardship that survivors may be facing when it explicitly gave covered providers up to two business days to complete requests, and we otherwise anticipate that it would be difficult for covered providers to accurately determine which requests qualify as emergencies or extreme hardship. For the same reason, we decline requests to require that covered providers process line separation requests within two calendar days. However, we expect that requiring providers to complete all requests as soon as feasible will prevent undue delay in completion of requests.

69. *Operational and Technical Infeasibility.* We codify the SCA's provision that covered providers who cannot operationally or technically effectuate a line separation request are relieved of the obligation to effectuate line separation requests. Additionally, we conclude that any line separation a covered provider can complete within two business days under its existing capabilities, as those may change over time, does not qualify as operationally or technically infeasible. We conclude that because this provision specifies that covered providers are only relieved of the ''requirement to *effectuate* a line separation request,'' providers are generally obligated to offer survivors the ability to *submit* requests for line separations described in the statute, even if the provider may not be able to effectuate such separations in some instances. However, to avoid survivor confusion and minimize the need for communications between covered providers and survivors, if a covered provider cannot operationally or technically effectuate certain types of line separations in all instances, we require the covered provider to clearly notify the survivor in its Notice to Consumers and through whatever mechanisms survivors are permitted to use to request line separations, which types of line separations the provider cannot perform and state that it cannot perform those separations due to operational or technical limitations.

70. We require covered providers to take reasonable steps to be able to effectuate all types of line separations permitted by the statute, but decline to prescribe when a provider can rely on the operational or technical infeasibility exception. We find that the intent and spirit of the SCA's line separation requirement is that survivors be able to obtain the line separations of their choosing, and the record indicates that covered providers intend to and will be capable of effectuating most line separation requests. We therefore think it is appropriate that all covered providers be required to take reasonable steps to be able to effectuate all types of line separations. However, given the significant differences in covered providers' processes and systems, we conclude that we cannot categorically define which types of line separations qualify as operationally or technically infeasible and that the better course of action is to give providers flexibility to make such determinations. We nevertheless expect that all covered providers will be able to effectuate at least some types of line separations.

71. We also codify the SCA's requirement that a covered provider that cannot operationally or technically effectuate a line separation request must: (1) notify the survivor who submitted the request of that infeasibility, and (2) provide the survivor with information about alternatives to submitting a line separation request, including starting a new account for the survivor. The SCA uses the phrase ''starting a new line of service'' which is ambiguous. A new line, if made on the same shared account with the abuser, would not accomplish Congress's goal of ensuring survivors ''establish[ ] independence from . . . abuser[s].'' We thus understand this phrase to describe starting a new account for the survivor, which we believe accords with Congress's intent. We require covered providers to explain in the notification the nature of the operational or technical limitations that prevent the provider from completing the line separation as requested and any available alternative options that would allow the survivor to obtain a line separation. Consistent with the SCA, we require a covered provider to notify a survivor of any rejection of a line separation request as a result of operational or technical infeasibility at the time of the request, or for a request made using remote means, not later than two business days after the covered provider receives the request. Covered providers shall deliver these notifications in the manner of communication selected by the survivor at the time of the request and in the language selected by the survivor, if applicable. Verizon encourages the Commission to permit providers to give ''short plain-English explanations'' regarding the nature of a operational or technical limitation preventing the processing of a line separation. While we agree with Verizon that covered providers should not overwhelm survivors with technical explanations, we do require providers to give survivors as much information about the operational or technical limitation as will allow them to make informed decisions about what to do next, such as, *e.g.,* revise their request, initiate a new request, or seek other options.

72. We conclude that covered providers must offer, allow survivors to elect, and effectuate any available alternative options that would allow survivors to obtain a line separation. This proposal was unopposed in the record. For example, if a covered provider is not able to separate an abuser's line from an account because the abuser is the primary account holder, but can separate the survivor's line from the account, the provider must offer that alternative. Likewise, if a covered provider is not capable of processing a line separation request in the middle of a billing cycle but can do so at the end of the billing cycle, the provider must offer that. This approach maximizes the benefits of the line

separation requirement and helps prevent survivors from being forced into a less desirable alternative. We find that the approach we take here achieves the goals of the SCA without placing undue costs and burdens on covered providers. Verizon explains that ''in some cases, a wireless provider may not be able to create a new account for a survivor without initially applying certain financial obligations as part of the account setup'' and argues that ''as long as those obligations are promptly waived by the system or the customer service employee after the new account is created, Congress's objective is met.'' We agree; however, in such instances survivors must not be required to take additional steps for such financial obligations to be waived; the wavier must be automatic.

73. Finally, we also require covered providers to deliver a clear and concise notification to survivors, within two business days after receiving the request, if a line separation request is rejected for any other reason, and such notification must include the basis for the rejection and information about how the survivor can either correct any issues, submit a new line separation request, or select alternative options to obtain a line separation, if available.

74. *Resubmissions.* To ensure that survivors making legitimate line separation requests can receive timely relief, we conclude that any corrections, resubmissions, or selected alternatives for obtaining a line separation submitted by survivors following a denial should be treated as new requests and therefore must be processed by covered providers as soon as feasible, but not later than close of business two business days after the provider receives the request. We agree with EPIC et al. that ''[t]ime may be of the essence when a survivor initiates the line separation request, and there is no reason a provider expected to respond within two days of the initial submission cannot respond within two days for subsequent submissions.''

75. *Measures to Stop Abusers from Preventing Survivors from Obtaining Line Separations.* We are concerned that some abusers may take preemptive steps to prevent survivors from obtaining line separations, particularly if an abuser becomes aware of a survivor's attempt to separate a line. We reiterate our conclusion in the *Safe Connections NPRM* that the SCA requires covered providers to complete non-fraudulent line separations as long as the request provides the information required or permitted by the statute and our implementing rules, subject to operational and technical feasibility. Accordingly, we implement rules to ensure survivors can obtain line separations notwithstanding abusers' efforts to prevent them from doing so. First, to stop an abuser or other user from removing the survivor's access to the line before the request is processed, we require covered providers to lock an account to prevent all SIM changes, number ports, and line cancellations (other than those requested as part of the line separation request pursuant to section 345 and our rules) as soon as feasible after receiving a completed line separation request from a survivor, and until a request is processed or denied. Second, given evidence in the record that abusers may seek to exert control over survivors and to ensure that account locks do not become an avenue for perpetuating abuse and other crimes, we require covered providers to effectuate line separations, and any number port and SIM change requests made by the survivor as part of the line separation request, regardless of whether an account lock is activated on the account. There is some evidence in the record that stalkerware apps and spyware can be used to further endanger survivors, and we think it is reasonable to conclude that some survivors may request a SIM change so they can keep their separated number, but use a new device, for safety reasons. Finally, in situations where any customer other than the survivor requests that the covered provider stop or reverse a line separation on the basis that the line separation request was fraudulent, covered providers must complete or maintain any valid line separation request and make a record of the customer's complaint in the customer's existing account and, if applicable, the customer's new account, in the event further evidence shows that the request was in fact fraudulent. We conclude that our approach here best balances the importance of account protection measures to prevent fraud with the goal of ensuring survivors can obtain legitimate line separations.

76. *Notification to Primary Account Holders and Abusers.* As contemplated by the SCA, we require a covered provider to inform a survivor who has submitted a line separation request, but who is not the primary account holder, of the date on which the covered provider intends to give any formal notification to the primary account holder. We also require covered providers to inform survivors of the date the covered provider will inform the abuser of a line separation, cancellation, or suspension of service, involving the abuser's line to the extent such notification is necessary. We require covered providers to give such notice to the survivor as soon as is feasible after receiving a completed line separation request. As API–GBV notes, by informing survivors of the date the abuser will learn of the line separation, covered providers will give survivors an opportunity to ''do relevant and timely safety planning.'' We prohibit a covered provider from notifying an abuser who is not the primary account holder when the lines of a survivor or an individual in the care of a survivor are separated from a shared mobile service contract. By limiting the scope of when covered providers may notify abusers of line separations, we acknowledge the concerns of multiple commenters who stress that ''[o]ne of the most dangerous times for a victim is when they are attempting to leave an abusive situation and the abuser becomes aware of their intent.'' We also prohibit a covered provider from notifying a primary account holder, or an abuser who is not a primary account holder, of a survivor's request for a SIM change when made in connection with a line separation request pursuant to section 345. We decline to require covered providers to further delay notification to a primary account holder or abuser whose line is being separated, as proposed by some commenters, though we permit and encourage covered providers to do so if operationally feasible. As some commenters have noted, a line separation request involving the separation of the abuser's line may require the abuser to become financially responsible for the line immediately following the separation, or to give consent to open a new account. In such situations, the covered provider may need to inform the abuser immediately upon or before separating the abuser's line, making a notification delay infeasible. In implementing processes to ensure that primary account holders and, when necessary, abusers, are not notified about line separations until the date that the covered provider has provided to the survivor, we emphasize that covered providers should be mindful of their existing internal systems and processes that may cause some or all account users to receive automatic notifications about account activity, which may serve as de facto notifications about the line separation request.

d. Documentation of Completed Line Separation Request Submission

77. We require covered providers to provide a survivor with documentation that clearly identifies the survivor and shows that the survivor has submitted a legitimate line separation request under

section 345(c)(1) and the Commission's rules upon completion of the providers' line separation request review process. The SCA limits access to ''emergency communications support'' in the designated program to those survivors that meet the requirements of section 345(c)(1) and that are experiencing financial hardship, regardless of their ability to otherwise participate in the designated program. As such, survivors will require documentation demonstrating their submission of a legitimate line separation request to enroll in Lifeline, as the designated program, and receive support. Although no commenter offered specific suggestions about the type of information that should be included in this documentation to process a request for Lifeline support, we rely on the Commission's substantial experience managing its affordability programs to determine an appropriate approach. Specifically, regarding survivor identity, we require that the documentation include the survivor's full name and confirmation that the covered provider authenticated the survivor as a user of the line(s) subject to the line separation request. We further require that covered providers give survivors this documentation even if the line separation request could not be processed due to operational or technical infeasibility, as long as the survivor submitted a completed request in accordance with the requirements of section 345(c)(1) and the Commission's rules. We observe that entry into the emergency communications program is not limited to only those survivors who successfully obtain a line separation, but rather to those who satisfy the requirements of section 345(c)(1) and are experiencing financial hardship. Finally, we require covered providers to provide this documentation to survivors in a manner that would allow the survivor to share that documentation with USAC when the survivor seeks Lifeline support pursuant to the SCA. Accordingly, covered providers must provide the documentation in a written format that can be easily saved and shared by a survivor, such as an electronic notice delivered over email, information in a survivor's new account that can be easily downloaded or captured via a screenshot, some method of text messaging that can be easily captured via screenshot, or regular mail delivered to an address designated in the request. Telephonic delivery of this notice is insufficient, as it will not allow the survivor to confirm that they complied with the requirements of the line separation process. Covered providers should deliver this documentation via the means selected by the survivor for communications regarding the line separation request, to the extent such means satisfy both requirements. We acknowledge, however, that depending on the methods a survivor chooses for communications with a covered provider regarding the line separation request, covered providers may not have contact information that would allow them to send certain written documentation, and we permit providers to request contact information only for the purpose of providing this documentation for Lifeline enrollment under the SCA.

e. Employee Training

78. We conclude that all covered provider employees who may interact with survivors regarding a line separation request must be trained on how to assist them or on how to direct them to other employees who have received such training. Industry commenters stressed the need for flexibility regarding employee training requirements to account for differences in provider resources, customer bases, and systems. Moreover, NCTA noted that ''avoiding prescriptive rules also would reduce the implementation burdens associated with the new requirements.'' We believe that a flexible approach to training and customer service will best allow providers, particularly small providers, to account for differences in operational capabilities, resources, service models, and customer bases, and as such, we decline to adopt more prescriptive requirements regarding training of employees. Verizon noted that it ''maintains a group of customer care employees specially trained to handle the sensitivities surrounding [line separation requests] from domestic violence survivors and to walk the survivors through the secure process of documenting the abuse, establishing a new account (or removing an alleged abuser from an existing account), selecting a service plan and, where requested, facilitating a number change or port out.'' While we applaud Verizon's efforts and urge covered providers to consider a similar approach, we decline to mandate that every covered provider maintain specialized staff to address survivor line separation requests, as API–GBV suggests. The record reflects that not all providers, particularly small providers, may have the operational capabilities or resources to establish specialized units of staff.

4. Notice to Consumers

79. As proposed in the *Safe Connections NPRM,* we require covered providers to provide a ''Notice to Consumers'' with information about the options and process for a line separation request made readily available to all consumers through the provider's public-facing communication avenues. We specifically incorporate the SCA's requirement that covered providers ''make information about the options and process'' regarding line separations ''readily available to consumers: (1) on the website and the mobile application of the provider; (2) in physical stores; and (3) in other forms of public-facing consumer communication'' for this ''Notice to Consumers.'' The record reflects that the Notice to Consumers should be available in an ''easy to find,'' ''prominent,'' or ''obvious'' place on provider websites and applications, and as such, we require covered providers to place the Notice to Consumers, or a prominent link to it, on a support-related page of the website and mobile application of the provider, such as a customer service page. We agree with Verizon and NCTA that adopting a flexible, rather than a one-size-fits-all, requirement for the placement of the Notice to Consumers on provider websites and applications enables the wide variety of covered providers to display it in the way that is most suitable to their customers, and find that our approach here strikes the right balance between being minimally prescriptive and ensuring that there is some consistency between covered providers' practices. API–GBV suggests that we require providers to include links to other victim-related resources, such as the National Domestic Violence Hotline, or National Sexual Assault Hotline. We decline to do so as this is outside the scope of the requirements of the SCA. In physical stores, we permit covered providers to make the Notice to Consumers readily available via flyers, signage, or other handouts, and require covered providers, at a minimum, to ensure that any materials containing the Notice to Consumers in-store are clearly visible to consumers and accessible. We also require covered providers to provide the Notice to Consumers in-store in all languages in which the provider advertises within that particular store and on its website in all languages in which the provider advertises on its website, and in all formats (large print, braille, etc.) that the provider uses to make its service information available to persons with disabilities. Commenters take no direct

issue with this approach for the in-store or website Notice to Consumers.

80. We decline at this time to provide more specific guidance regarding the SCA's requirement that covered providers make the Notice to Consumers readily available ''in other forms of public-facing consumer communication.'' We received no comment regarding what other forms of communication covered providers employ and how such providers should make the Notice to Consumers readily available through those avenues. Given the wide variety of communication methods that could fall within this category, and the lack of record received from industry and consumer stakeholders, we conclude the best approach is to preserve the flexibility of covered providers to determine how best to communicate the Notice to Consumers beyond their websites and stores. We may revisit this approach in the future should we determine that covered providers are not doing enough to apprise consumers of their rights under the SCA.

81. Consistent with the SCA, we require covered providers to include in the Notice to Consumers, at a minimum, an overview of the line separation process that we adopt in this document; a description of survivors' service options that may be available to them; a statement that the SCA does not permit covered providers to make a line separation conditional upon the imposition of penalties, fees, or other requirements or limitations; and at least basic information concerning the availability of the Lifeline support for qualifying survivors. We decline to adopt the suggestion of the NYC ENDGBV that we ''require standardized language to explain the entire process of line separation to survivors,'' as we find it is most appropriate to allow covered providers to tailor the Notice to Consumers to their services, operations, and systems. By permitting some flexibility in how covered providers communicate the Notice to Consumers, covered providers may give detail regarding how their particular customers may request a line separation. Additionally, given the variety of platforms and media on which the Notice to Consumers will be published, this flexibility will give covered providers the leeway to optimally design the notice for each communication method.

5. Prohibited Practices in Connection With Line Separation Requests

82. We adopt our proposal to codify the provisions of the SCA prohibiting covered providers from making line separations contingent on: (1) payment of a fee, penalty, or other charge; (2) maintaining contractual or billing responsibility of a separated line with the provider; (3) approval of separation by the primary account holder, if the primary account holder is not the survivor; (4) a prohibition or limitation, including payment of a fee, penalty, or other charge, on number portability, provided such portability is technically feasible, or a request to change phone numbers; (5) a prohibition or limitation on the separation of lines as a result of arrears accrued by the account; (6) an increase in the rate charged for the mobile service plan of the primary account holder with respect to service on any remaining line or lines; or (7) any other requirement or limitation not specifically permitted by the SCA. We agree with Verizon that the SCA's ''restrictions on various rates, terms, and conditions of service are largely self-executing and self-explanatory,'' and commenters generally support our approach in interpreting these provisions of the SCA. We provide further guidance on these prohibitions, as necessary, below.

83. *Fees, Penalties, and Other Charges.* We adopt the SCA's prohibition on making a line separation contingent on payment of a fee, penalty, or other charge. As explained in the *Safe Connections NPRM,* and supported by the record, we conclude that this clause would prohibit covered providers from enforcing any contractual early termination fees triggered by the line separation request, if the line separation request was made pursuant to section 345, regardless of whether a survivor continues to receive service from the provider as part of a new arrangement upon a line separation or ceases to receive service from the provider. We make this explicit in our rule implementing this provision.

84. *Number Portability and Number Changes.* We incorporate into our rules the SCA's prohibition on conditioning a line separation on the customer maintaining service with the provider (provided that such portability is technically feasible). We interpret the SCA's prohibition on number portability restrictions and fees in relation to a line separation request as requiring covered providers to permit both the party remaining on an account and the party separating from an account to port their numbers, without fees or penalties, provided such portability is technically feasible. Likewise, we incorporate into our rules the SCA's provision that prevents a covered provider from prohibiting or limiting a survivor's ability to request a phone number change as part of a line separation request, as proposed. As we explained in the *Safe Connections NPRM,* a survivor who is the primary account owner requesting separation of an abuser's line from the account might want to keep the account to maintain any promotional deals, complete device pay-off, or avoid early termination fees, but change a telephone number for safety purposes. We conclude that this provision of the SCA bars covered providers from prohibiting such telephone number change requests or attaching a fee or penalty for doing so.

85. *Rate Increases.* We incorporate in our rules the SCA's provision that prohibits covered providers from making line separations contingent on a rate increase for the primary account holder's plan with respect to service on any remaining line or lines, although a covered provider is not required to provide a rate plan for the primary account holder that is not otherwise commercially available. As proposed in the *Safe Connections NPRM,* we interpret this provision to prohibit covered providers from denying a survivor's line separation request if the primary account holder for the remaining lines does not agree to a rate increase, or from forcing the remaining primary account holder to switch to a service plan that has a higher rate, although the person may elect to switch to a rate plan that has a higher or lower rate from among those that are commercially available. We also find this provision does not require covered providers to offer survivors or remaining parties a specialized rate plan that is not commercially available if the party does not choose to continue the existing rate plan. We agree with Verizon that beyond this guidance, ''it would be unnecessary and counterproductive to micromanage or prescriptively regulate how wireless providers implement'' these duties, given their wide variety of ''different service plans and business models.'' Accordingly, we decline NCTA's suggestion to make explicit in our rules ''that it is permissible for accounts affected by a line separation to remain eligible for multi-line discounts based on the number of lines active on each account after the separation has been implemented,'' though we note that such a practice would not be prohibited under the SCA or our implementing rules, as long as the line separation was not contingent on the acceptance by the account holder of a new plan.

86. *Contractual and Billing Responsibilities.* We incorporate in our rules the SCA's prohibition on making a line separation contingent upon

''maintaining contractual or billing responsibility of a separated line'' with the covered provider. As proposed in the *Safe Connections NPRM,* we interpret this provision as requiring covered providers to give the party with the separated line the option to select any commercially available prepaid or non-contractual service plan offered by the covered provider, whether that party is a survivor or abuser. We also conclude that this provision prohibits covered providers from requiring a survivor who separates a line to maintain the same contract, including any specified contract length or terms, as the account from which those lines were separated (*i.e.,* continuing a contract for the remainder of the time on the original account for the new account or requiring the survivor to maintain all previously-subscribed services (voice, text, data) under the new account).

87. *Credit Checks.* Consistent with the record, we adopt our proposal to specify that covered providers may not make line separations contingent on the results of a credit check or other proof of a party's ability to pay. We likewise adopt our proposal to prohibit covered providers from relying on credit check results to determine the service plans from which a survivor is eligible to select and whether a survivor can take on the financial responsibilities for devices associated with lines used by the survivor or individuals in the care of the survivor. As Congress explained, ''[s]urvivors often lack meaningful support and options when establishing independence from an abuser, including barriers such as financial insecurity,'' and survivors may thus not be able to demonstrate their financial stability as a result of their abusive situation. As such, we find it consistent with the SCA to prohibit covered providers from making line separations contingent on the results of a credit check or other proof of a party's ability to pay. Consistent with our tentative findings in the *Safe Connections NPRM,* however, we find that these restrictions would not impact the ability of a covered provider to perform credit checks that are part of its routine sign-up process for all customers as long as the covered provider does not take the results of the credit check into account when determining whether it can effectuate a line separation. We believe this approach addresses NCTA's suggestion that the Commission not prohibit covered providers from ''requir[ing] other proof of ability to pay or other verification information'' as part of ''applying their standard payment terms to separated accounts . . . .'' Stated another way, we permit covered providers to use credit checks in the generally applicable account sign-up process after they have effectuated the line separation for survivors.

6. Financial Responsibilities and Account Billing Following Line Separations

88. We adopt our proposal to codify the SCA's statutory requirements for financial responsibilities and account billing following line separations. Specifically, unless otherwise ordered by a court, when survivors separate their lines and the lines of individuals in their care from a shared mobile service contract, they must assume the financial responsibilities, including monthly service costs, for the transferred numbers beginning on the date on which a covered provider transfers the billing responsibilities for and use of the transferred numbers to those survivors. Covered providers may not require survivors to assume financial responsibility for mobile devices associated with those separated lines unless the survivor purchased the mobile devices, affirmatively elected to maintain possession of the mobile devices, or are otherwise ordered to by a court. When survivors separate an abuser's line from a shared mobile service contract, a covered provider may not impose on survivors any further financial responsibilities to the transferring covered provider for the services and mobile devices associated with the telephone number of the separated line. To ensure that providers can implement processes and procedures that work with their particular information technology (IT), billing, and other administrative systems, we decline to implement more prescriptive rules governing covered providers' administration of the financial responsibility and account billing requirements. Given the complexities and uniqueness of each provider's systems, we agree with CCA that ''flexible rules will enable wireless providers to comply and make necessary technical and operational updates in a manner best adapted to their service model, customer base, and available resources.'' Although we decline to implement more prescriptive rules beyond those established in the SCA, in consideration of the record, and pursuant to the SCA's charge that we consider account billing procedures and financial responsibilities in adopting rules governing line separations, we clarify how providers apply those obligations below.

89. *Lines.* Although the SCA contemplates that survivors will not be financially responsible for the abuser's line the moment the line separation is processed, we recognize that there may be instances when a covered provider cannot practically prorate those financial responsibilities. In such instances, we make clear that a covered provider can rely on the operational and technical infeasibility exception to process the request without prorating the financial responsibilities for the abuser's line, as long as the provider releases the survivor from financial responsibility for the abuser's line at the start of the next billing cycle, which we expect will not be more than one month following the date the request is processed.

90. Similarly, we understand, as Verizon explains, that ''in some cases, a wireless provider may not be able to create a new account for a survivor without initially applying certain financial obligations as part of the account setup.'' We agree that, ''as long as those obligations are promptly waived by the system or the customer service employee after the new account is created, Congress's objective is met.'' We stress, however, that covered providers must waive these fees without requiring survivors to follow up or take additional steps.

91. *Devices.* We clarify how the obligations for device financial responsibilities apply when a third party is involved with the financing or sale of the device. NCTA states that ''some providers offer device financing through a third party, and it is the third party that has a contractual relationship with the customer.'' In that scenario, NCTA asserts, ''the provider may not have the ability to waive device costs and it should not be required to bear such costs.'' We observe that, in most cases, a contract to finance a device through a third party is an agreement to ''purchase'' the device, and as such, a survivor may be financially responsible for the financed device associated with the separated line under the provisions of the SCA. In any event, neither the SCA nor our rules require covered providers to bear device costs. If, however, a covered provider offers a device for sale on its website, in a retail store, or through some other means, we conclude that it is the provider's responsibility to ensure that the financial responsibilities for any devices are assigned to the appropriate party following a line separation, including when the device is purchased using third-party financing offered by the provider. We find that this approach most closely aligns with the goals of the SCA.

92. We agree with Verizon, however, that when a device is offered and financed by a third party, such as a big-box retailer or directly from the device manufacturer, the covered provider does not have an obligation to ensure that third party complies with the SCA's device financial responsibility obligations. In this scenario, the covered provider was not involved with the sale or financing of the device and has no relationship with the seller or financier, so there is no means by which the covered provider can compel the third party to comply with the obligations the SCA places on the provider.

93. *Payment Terms and Conditions.* We conclude that the SCA permits covered providers to apply their standard payment or contract terms and conditions to separated lines and devices, to the extent that such terms are consistent with the SCA's limitations on penalties, fees, and other requirements. We agree with NCTA that the statute ''is not intended to upend the customer-provider relationship,'' and that requiring different terms and conditions in service agreements for survivors could ''increase the incidence of fraud.'' In this regard, NCTA noted that ''some providers may require a credit card to secure the device, require or incentivize enrollment in monthly auto-pay programs, or require other proof of ability to pay or other verification information, such as billing address or the last four digits of the Social Security number.'' These provider practices do not appear to run afoul of the SCA's limitations. Providers, however, should be keenly aware that some survivors may lack access to credit, may be in a transitory state and temporarily lack a permanent address, or be otherwise unable to satisfy some other standard provider requirements. In such cases, providers should work closely with survivors by either helping them gather the necessary payment and verification documentation or by providing information on how they can otherwise satisfy provider requirements, such as by applying to the Lifeline program for financial assistance. If a survivor is ultimately unable to satisfy the provider's standard terms, the provider should also be prepared to inform the survivor of alternative communications service options the provider may offer, such as prepaid or postpaid plans, or the ability to port a number to another provider who may offer service to those in similar circumstances. Though not required by the SCA or by our rules, providers should consider waiving certain terms and conditions some survivors may be temporarily unable to satisfy due to extenuating circumstances. Congress's findings note the key role communications services can play in helping survivors establish autonomy and safety from abusers, but provider terms and conditions that are too onerous on survivors could unnecessarily impede survivor access to the SCA's benefits, including the ability to establish independent wireless service.

94. *Arrears.* We adopt our proposal that any previously accrued arrears on an account following a line separation must stay with the person who was the primary account holder prior to the separation. For example, if the abuser's line is separated and the abuser was the primary account holder, the arrears would be reassigned to the abuser's new account. Similarly, if the survivor was the primary account holder and separates the abuser's line, the arrears would stay with the survivor's account. Conversely, if the survivor's line is separated and the abuser was the primary account holder, the arrears would stay with the abuser's account. No commenters raised any concerns about the administrability of this approach.

7. Effects on Other Laws and Regulations

95. *Number Porting.* We conclude that the Commission's current telephone number porting rules apply for lines that have been separated pursuant to section 345 of the Communications Act. As explained in the *Safe Connections NPRM,* we do not believe, and the record provides no indication, that there is anything unique about number ports associated with line separations that would make such ports more or less technically feasible than under other circumstances. Accordingly, we conclude that any ports covered providers are currently required to complete, and technically capable of completing, are technically feasible under the SCA. We also conclude that should the requirements or capabilities for number porting change in the future, any newly feasible ports will also be considered technically feasible when sought in connection with a line separation under the SCA.

96. We also find that, as a practical matter, although survivors may indicate as part of their line separation request that they intend to port out the separated (or remaining) telephone numbers to a new provider, a covered provider must complete a line separation request prior to effectuating a number port pertaining to that line. As the Commission explained in its *Safe Connections NPRM,* customers who want to port a number to a new provider currently must provide the telephone number, account number, ZIP code, and any passcode on their existing account to the new provider. Survivors who are not primary account holders, however, may have limited access to the necessary account information. However, once a line separation is completed, a survivor will have a new account and presumably have access to all the information needed to port a number to a new provider. Furthermore, as Verizon noted and as NCTA echoed, completing the line separation process and then porting a number will ''enable providers to leverage their existing porting processes, to apply appropriate porting fraud prevention measures, and to manage their number inventories in a manner that facilitates continued compliance with the number aging and Reassigned Number Database (RND) reporting requirements.'' And, because simple wireless-to-wireless ports typically happen within a few hours, there would be little time saved by requiring providers to concurrently separate lines and process ports. As such, we find that providers should process and complete line separation requests before completing number ports, which will allow them to leverage their existing systems and processes that port numbers ''routinely and reliably.'' To the extent that a survivor initiates a port-out request with a new service provider for a line that is the subject of an in-process line separation request, we prohibit the current service provider from notifying the account holder of the request to port-out that number until after the line separation request has been completed, to avoid situations where an abuser who is the account owner is notified of a survivor's pending line separation or port-out request on an account shared by an abuser and a survivor.

97. *Compliance with Privacy Protections and Other Law Enforcement Requirements.* In adopting rules to implement the SCA, Congress directed the Commission to consider, among other things, privacy protections and compliance with the Commission's CPNI rules or any other legal or law enforcement requirements. The Commission's CPNI rules implement section 222 of the Communications Act, which obligates telecommunications carriers to protect the privacy and security of information about their customers to which they have access as a result of their unique position as network operators. Section 222(a) requires carriers to protect the

confidentiality of proprietary information of and relating to their customers. Subject to certain exceptions, section 222(c)(1) specifically provides that a carrier may use, disclose, or permit access to CPNI that it has received by virtue of its provision of a telecommunications service only: (1) as required by law; (2) with the customer's approval; or (3) in its provision of the telecommunications service from which such information is derived or its provision of services necessary to or used in the provision of such telecommunications service. The Commission's rules implementing section 222 are designed to ensure that telecommunications carriers establish effective safeguards to protect against unauthorized use or disclosure of customers' proprietary information. Among other things, the rules require carriers to appropriately authenticate customers seeking access to CPNI. The Commission's CPNI rules also require carriers to take reasonable measures to both discover and protect against attempts to gain unauthorized access to CPNI and to notify customers immediately of certain account changes, including whenever a customer's password, response to a carrier-designed back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed.

98. We provide additional guidance regarding the treatment of historical CPNI and notification of account changes related to lines subject to a line separation request pursuant to section 345. In particular, we make clear that historical CPNI shall remain with the original account, though we permit covered providers to move CPNI associated with a separated line if feasible. We agree with NDVH that retroactively separating historical CPNI by each line on an account and then transferring it along with the separated line to a new account may not be technically feasible or practical for providers. Therefore, we conclude that covered providers are not required to move historical CPNI associated with a separated line to a new account, although we encourage providers to do so to the extent possible.

99. We also modify the Commission's rule requiring telecommunications carriers to notify customers ''immediately'' whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed'' to clarify that this rule does not apply when such changes are made in connection with a line separation request made pursuant to the SCA.

100. Finally, we make clear that except for any enhanced protections provided to survivors under state law as described in section 345(c)(3), compliance with the line separation provisions of the SCA and the rules we have adopted in this document to implement those provisions supersede and preempt any conflicting obligations under state law, Commission rules, or state rules. Commenters did not raise concerns regarding conflicts with any law enforcement provisions regarding line separations.

8. Implementation

101. *Compliance Timeframe.* Consistent with prior Commission actions, and in light of the urgency of this issue to survivors' safety, we require covered providers to comply with our rules implementing the SCA's line separation provisions within a short period of time, six months after the effective date of this document or after review of the rules by the Office of Management and Budget (OMB) is completed, whichever is later. The SCA states that the line separation requirements in the statute ''shall take effect 60 days after the date on which the Federal Communications Commission adopts the rules implementing'' those requirements, but also directs the Commission, in adopting rules, to consider ''implementation timelines, including those for small covered providers.'' We find the SCA's direction that the Commission consider ''implementation timelines'' in adopting rules to implement new section 345 of the Communications Act provides the Commission with discretion to establish an appropriate compliance timeframe as necessary based on the record. Because we establish a compliance timeframe for our implementing rules that is after the effective date of new section 345 of the Communications Act, we will delay enforcement of those rule provisions until after the compliance date of the rules. Further, because many of the rules we adopt to implement new section 345 of the Communications Act contain information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and the SCA provides no stated exception to the PRA, we have an independent statutory obligation to comply with the PRA in adopting rules to implement the SCA. We therefore require covered providers to comply with the rules implementing the line separation provisions of the SCA six months after the effective date of this document, or after OMB completes review of the rules, whichever is later. We direct the Wireline Competition Bureau to issue a Public Notice announcing the compliance date for the rules implementing section 345 once OMB completes its review.

102. The record demonstrates that implementing the line separation provisions of the SCA will require providers to make significant changes to their systems and processes. As NCTA explains, ''providers will need time to build internal systems to meet the requirements of the Commission's rules, to test, deploy, and train. There are a number of unknown variables that make it difficult to fully build out a provider's compliance system until the Commission adopts the final rules.'' We agree with CTIA that ''[g]iven the highly sensitive nature of supporting survivors, it is vitally important that providers have sufficient time to implement the necessary changes to their systems and processes accurately and effectively.'' We are also mindful that, absent sufficient time to modify and test their systems, a significant number of covered providers will employ the technical and operational infeasibility exception to deny line separation requests, leading to widespread survivor confusion. For these reasons, we require covered providers to comply with the rules implementing the statutory line separation requirements six months after the effective date of this document, or after OMB review of those rules that involve information collections under the PRA, whichever is later. We find, however, that permitting a more extended compliance timeframe for implementing the line separation provisions, as advocated for by industry commenters would be inconsistent with the urgency Congress demonstrated with the underlying statutory obligation as well as with the critical wireless communications needs of survivors well-documented in the record. We anticipate that many covered providers will be equipped to effectuate line separations within six months of the effective date of this document, given the steps that the industry has already taken to advance this important process, and we encourage covered providers to implement the rules we adopt in this document as expeditiously as possible given the urgency of the concerns at issue. We also remind covered providers that given the urgency expressed by Congress in the SCA, they should be sensitive to survivors that may need assistance during the six-month implementation and compliance

timeframe, and strongly encourage covered providers not to subject survivors to fees or other restrictions in conjunction with setting up a new account or cancelling an existing account while the line separation process is technically or operationally infeasible.

103. The SCA directs the Commission to consider implementation timelines for small covered providers, and after examination of the record, we decline to adopt a different compliance timeframe for small providers. First, given the critical and potentially lifesaving importance of independent communications for survivors escaping abusive circumstances, we think it self-evident that survivors who receive service from small covered providers are no less entitled to the protections made available by the SCA than survivors who receive service from other covered providers. Second, we find that adopting inconsistent timelines for small and large providers may make it difficult for stakeholders to carry out effective messaging campaigns touting the availability of line separations. This inconsistency may confuse survivors and ultimately dissuade them from further pursuing a line separation if they are told that their current carrier does not offer the ability despite having been informed of the SCA's features by a stakeholder messaging campaign. Third, we believe that Congress included the technical and operational infeasibility provisions to account for differences in the capabilities of providers (among other reasons), particularly between large and small providers, and to incentivize and protect providers while they work to update or develop systems and processes capable of fully effectuating the SCA's requirements and our rules within the compliance timeframe.

*B. Ensuring the Privacy of Calls and Text Messages to Domestic Abuse Hotlines*

104. The SCA directs the Commission to consider (i) whether and how to ''establish, and update on a monthly basis, a central database of covered hotlines to be used by a covered provider or a wireline provider of voice service,'' and (ii) whether and how to ''require a covered provider or a wireline provider of voice service to omit from consumer-facing logs of calls or text messages any records of calls or text messages to covered hotlines in [such a] central database, while maintaining internal records of those calls and messages.'' As discussed below, we find it is in the public interest to establish such a central database and adopt a process for doing so. We begin our discussion with the requirement for covered providers to exclude calls or text messages to covered hotlines from consumer-facing call logs, and the definitions of key terms.

1. Creating an Obligation To Protect the Privacy of Calls and Text Messages to Covered Hotlines

105. We adopt our proposal to require covered providers and wireline providers of voice service to exclude from consumer-facing logs of calls or text messages any records of calls or text messages to covered hotlines that appear in a central database (discussed further below), and to retain internal records of the omitted calls and text messages. We make clear that the use of the word ''omit'' in our rule provision regarding this requirement (§ 64.6408(a) (''All covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service shall . . . [o]mit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission'')), should be understood to mean ''completely exclude,'' not merely redact identifying detail. Congress determined that ''perpetrators of [sexual] violence and abuse . . . increasingly use technological and communications tools to exercise control over, monitor, and abuse their victims,'' and that ''[s]afeguards within communications services can serve a role in preventing abuse and narrowing the digital divide experienced by survivors of abuse.'' These findings are supported by, among other things, field work with domestic violence survivors demonstrating the risk of abusers' accessing domestic abuse survivors' digital footprint, particularly call logs. The record in this docket also reflects concerns raised regarding call and text logs. For example, the New York State Office for the Prevention of Domestic Violence notes that ''[r]isk to survivors escalates when they are seeking to leave their abuser and calls to hotlines often precede separation from one's abuser,'' and the Network for Victim Recovery of DC (NVRDC) observes that ''[c]all and text records to and from covered organizations would likely tip off an abuser who is closely monitoring all communications.'' We are concerned that survivors may be deterred in seeking help by the threat of an abuser using access to call and text logs to determine whether the survivor is in the process of seeking help, seeking to report, or seeking to flee. We therefore conclude that protecting the privacy of calls and text messages to covered hotlines, as described by the SCA, is in the public interest. This proposal received broad support and no opposition.

106. The SCA specifically requires the Commission to consider certain matters when determining whether to adopt a requirement for protecting the privacy of calls and text messages to hotlines. Specifically, section 5(b)(3)(B) of the SCA requires us to consider the technical feasibility of such a requirement—that is, ''the ability of a covered provider or a wireline provider of voice service to . . . identify logs that are consumer-facing . . . and . . . omit certain consumer-facing logs, while maintaining internal records of such calls and text messages,'' as well as ''any other factors associated with the implementation of [such requirements], including factors that may impact smaller providers.'' Section 5(b)(3)(B) also requires us to consider ''the ability of law enforcement agencies or survivors to access a log of calls or text messages in a criminal investigation or civil proceeding.''

107. The Commission tentatively concluded in the *Safe Connections NPRM* that covered providers and wireline providers of voice service are able to identify consumer-facing call and text logs, and no commenter disputed this assertion. Nor did any commenter contend that excluding calls and text messages to covered hotlines from consumer-facing call logs was technically infeasible, or that it was technically infeasible to retain internal records of such calls while excluding such calls from consumer-facing call logs. Indeed, none of the trade associations representing substantially different segments of covered providers and/or providers of wireline voice service raises specific issues relating to selectively omitting calls and text messages from call and text logs in their discussion of implementation.

108. We also adopt our proposal to require providers that remove calls and text messages to covered hotlines from consumer-facing call logs to retain an internal record of such calls for as long as they normally retain internal records of calls. Retaining such internal records is necessary to ensure some record remains available if disputes or criminal investigations or civil or criminal legal proceedings arise. Further, records of calls and text messages do not appear to exist solely in the form of call logs, but, rather, are independent records—that is, some processing must be applied to the records to create call logs. As a result,

as proposed, we require service providers to maintain internal records of calls and text messages that they exclude from consumer-facing logs when such records are required for any criminal or civil enforcement proceeding, or for any other reason. No commenter opposed this proposal. We use the term ''service provider'' to refer all types of providers to which we apply the obligation to protect the privacy of calls and text messages to hotlines—covered providers, wireline providers of voice service, and, as discussed below, fixed wireless and fixed satellite providers.

109. *Extension of Obligation to Fixed Wireless and Fixed Satellite Providers of Voice Service.* The Commission observed in the *Safe Connections NPRM* that subscribers to fixed wireless and fixed satellite voice service may expect that the privacy of their calls and text messages to hotlines are also protected, despite the providers of the service likely being neither ''covered provider[s]'' or wireline providers, and sought comment on whether we should therefore extend related obligations to such providers. No party responded to our request for comment on factors that would prevent such providers from complying with our rules in any respect. We believe that subscribers to such services should be afforded such protections, a matter that no party disputes, and that we should seek to meet survivor expectations regarding the privacy of their calls and text messages to hotlines. We therefore extend our related obligations to fixed wireless and fixed satellite providers of voice service.

110. We conclude that we have direct authority to adopt this requirement under titles II and III of the Communications Act, and we independently assert our ancillary authority to that end as well. We have direct authority to extend our rules protecting the privacy of calls and texts to hotlines to fixed wireless and fixed satellite providers of voice. Section 201(b) of the Communications Act requires that all charges, practices, classifications, and regulations in connection with common carrier service be just and reasonable, and authorizes the Commission to prescribe rules as necessary in the public interest to carry out this requirement. If fixed wireless and fixed satellite providers of voice service were not subject to our rule, they could continue to include calls to hotlines in their call logs. That practice would be unjust and unreasonable, particularly in instances in which the abuser established and controls the household account, and survivors in that household may not know that the relevant service in that account is provided over fixed wireless or fixed satellite rather than wireline facilities. In that situation, the survivors might believe, incorrectly, that their calls to hotlines would be omitted from call logs to which the abuser has access. Further, even if the survivors knew that the household service was fixed wireless or fixed satellite, they often would not appreciate the legal nicety that the Commission's rules shielded only certain types of calls to hotlines (mobile wireless or wireline) but did not shield two other types of calls (fixed wireless and fixed satellite) that were functionally indistinguishable from the survivor's point of view. In either of those situations, the safety, even the lives, of survivors would be threatened. For instance, if a survivor wrongly assumed that a fixed wireless hotline call to a hotline was shielded and then placed such a call, the abuser could readily discover that call and, in retribution, threaten or harm the survivor or prevent the survivor from separating his or her line or fleeing to safety. Such consequences would not be just and reasonable, and we therefore assert our authority under section 201(b) to require common-carrier providers of fixed wireless and fixed satellite voice to comply with new § 64.6408 of our rules. To the extent these providers are wireless or satellite licensees, we also have authority to impose these obligations pursuant to sections 301, 303, and 316 of the Communications Act.

111. As a separate and independent basis, we assert our ancillary authority, which may be employed, at the Commission's discretion, when the Communications Act ''covers the regulated subject'' and the assertion of jurisdiction is ''reasonably ancillary to the effective performance of [the Commission's] various responsibilities.'' Section 1 of the Communications Act grants the Commission authority over, among other things, ''radio communication,'' which fixed wireless and fixed satellite providers of voice services provide when processing originating calls and text messages. The duty to protect the privacy of calls and text messages to hotlines is reasonably ancillary to the Commission's duty to enable survivors safely to obtain line separations under section 4 of the SCA, and its duty under section 5(b)(3)(A) of the SCA to consider whether and how to adopt rules to establish a central database of domestic violence hotlines and to require covered providers and wireline providers of voice service to omit from consumer-facing logs of calls or text messages any records of calls or text messages to such hotlines. As explained above, if our new rule protecting the privacy of calls and text messages to hotlines were to apply to wireline providers of voice service but not fixed wireless or fixed satellite providers of voice, survivors often would not know whether their calls and text messages to hotlines would be omitted from the pertinent call logs. This is more likely to be the case when the abuser controls (and was therefore more likely to have established) the account, which is a common fact pattern when a survivor would be concerned about their abuser being able to see calls and text messages to hotlines on call logs. And that uncertainty likely would have devastating consequences for the safety of survivors, which in turn would defeat the purpose of the line-separation and protection of privacy of calls and texts to hotlines provisions of the SCA and, more generally, would undermine the SCA's overall goal of establishing ''safeguards within communications services [that] can serve a role in preventing abuse . . . experienced by survivors of abuse.'' Accordingly, we assert our ancillary authority to prevent those harms and ensure that new § 64.6408 works efficaciously.

112. *Technical Feasibility and Exceptions.* Consistent with the statutory directive, the Commission sought comment in the *Safe Connections NPRM* on the technical feasibility of imposing an obligation to protect the privacy of calls and text messages to hotlines on certain types of services providers and relating to certain calls. The Commission received requests relating to two matters in addition to a request pertaining to the compliance deadline for small service providers, which we discuss below. First, USTelecom seeks clarification that the rules that the Commission adopts do not apply to calls placed by, and any logs created in association with, (wireline) enterprise and similar multi-line telephone system (MLTS) customers. USTelecom argues that logs relating to such services are not *consumer*-facing logs and that these systems are managed, maintained, and controlled by the customer rather than the service provider. USTelecom's proposal was unopposed. We agree that both the SCA and the proposed rules are directed to *consumer*-facing logs and recognize that applying our rules to call logs that are not controlled by the service provider would complicate our implementation of the SCA. In addition, in the event that a survivor were to use

an enterprise system to place a call to a hotline, we believe that the large number of users of such enterprise systems, as compared to consumer accounts, creates more anonymity for survivors. As a result, we clarify that the rules we adopt pertaining to protecting the privacy of calls and text messages to hotlines do not apply to non-consumer accounts, such as for enterprise and MLTS service.

113. Second, commenters also raise undisputed concerns about the extent to which resellers, such as MVNOs, that ''depend on their underlying facilities-based providers for systems necessary to . . . screen call logs'' should be expected to comply, arguing that such resellers' obligations should be ''limited to the capabilities that the facilities-based provider makes available to its own customers.'' We conclude that it is not practical for service providers that do not create their own call logs but, instead, rely on their underlying facilities-based provider to create such call logs, to comply with our rules for protecting the privacy of calls and text messages to hotlines. We therefore exempt such service providers from these obligations. At the same time, however, we conclude that the underlying facilities-based service provider that produces the call logs for its wholesale customers (that is, the call logs that are ''consumer-facing'' toward the wholesale customers' end user customers) is obligated to comply with our rules. The definitions we adopt for ''covered provider,'' ''wireline provider of voice services,'' ''fixed wireless provider of voice services,'' and ''fixed satellite provider of voice services'' are not limited to retail services. And the definition we adopt for ''consumer-facing logs of calls and text messages'' does not state that the consumer at issue has to be a customer of the pertinent covered provider, wireline provider of voice service, fixed wireless provider of voice services, or fixed satellite provider of voice services. Accordingly, the definitions we adopt have the effect of imposing the same duty on wholesale providers that create call logs for their wholesale customers as imposed on providers that produce their own consumer-facing call logs. Imposing this duty also furthers the overall goal of removing calls and text messages to covered hotlines from consumer-facing call logs in the most comprehensive manner possible. Further, we expect resellers that do not control their own call logs to make good faith efforts, such as through their contracts, to ensure that their wholesale providers are complying with our rules.

114. Third, we decline to adopt CTIA's proposal to create a general technical infeasibility exception. While the SCA requires the Commission to consider ''the ability of a covered provider or wireline provider of voice service'' to identify consumer-facing logs and omit calls from consumer facing logs while retaining internal records of such calls, in contrast to the provisions relating to line separations, the SCA does not contain an explicit technical infeasibility exception. As previously discussed, the record demonstrates that service providers generally have these technical abilities. Furthermore, we find that survivor safety, which is promoted through the uninhibited use of domestic violence hotlines, weighs against leaving technical infeasibility standards to the subjective determination of service providers. Should service providers encounter specific technical feasibility issues in their implementation of the rules we adopt that they believe warrant an exception to those rules, they may use the Commission's general process for requesting waiver of a Commission rule. We delegate consideration of such waiver requests to the Wireline Competition Bureau.

115. *Access to Retained Internal Call Records.* As noted above, we require providers to retain internal records of the calls and text messages they omit from consumer-facing call logs as a result of the new rules. We do so recognizing, among other things, that section 5(b)(3)(C) of the SCA states that the Commission cannot ''limit or otherwise affect'' the ability of law enforcement to access call logs ''in a criminal investigation'' or ''alter or otherwise expand provider requirements'' under the Communications Access for Law Enforcement Act (CALEA). Although no commenter opposed our proposal to adopt this retention requirement, EPIC et al. proposed that we limit law enforcement's access to such records to instances where the survivor requests that law enforcement be given access, and to require a judicial order or grand jury subpoena before a provider could disclose the internal call or text records to law enforcement. We decline this request. The SCA prohibits us from ''limit[ing] or otherwise affect[ing] the ability of a law enforcement agency to access a log of calls or text messages in a criminal investigation[ ],'' and EPIC et al.'s request would appear to ''affect'' law enforcement's access as it would add constraints on law enforcement's access ability to call logs during a criminal investigation, especially in instances where speed is essential or where a survivor is unavailable to give consent. At the same time, we emphasize that while our rules neither limit or otherwise affect the ability of a law enforcement agency to access a log of calls or text messages in a criminal investigation, they are also not intended to enhance such access. They merely preserve the status quo by ensuring that service providers maintain the same records that they maintain today.

2. Definitions

116. How we define certain critical terms in the SCA significantly affects which service providers are subject to the call-log removal obligations discussed above and hotline-database obligations discussed below, the extent of such obligations, and to which hotlines the obligations apply. We adopt definitions of ''covered provider,'' ''voice service,'' ''call,'' ''text message,'' ''covered hotline,'' and ''consumer-facing logs of calls and text messages.''

117. *Covered Provider.* We conclude that all ''covered provider(s),'' as defined in the SCA, should be obligated to protect the privacy of calls and text messages to covered hotlines. We therefore adopt the same definition of covered provider used for the purpose of applying line separation obligations under section 345(a)(3) of the Communications Act, as added by the SCA. EPIC et al. supported this proposal, which received no opposition.

118. The National Lifeline Association argues that ''covered providers should not include mobile broadband providers that do not offer mobile voice service.'' To the extent that a covered provider does not actually have consumer-facing logs of calls, as the National Lifeline Association seems to assert some covered providers do not, then there is no obligation for omitting certain calls and text messages with which such covered provider must comply. This reasoning applies equally to covered providers that do not actually have consumer-facing logs of text messages. It is therefore unnecessary for us to create an exception for these situations within the definition of ''covered provider.''

119. *Voice Service.* In addition to covered providers, we apply the call-log removal duty to all ''wireline providers of voice service,'' as suggested by the SCA, as well as ''fixed wireless providers of voice service'' and ''fixed satellite providers of voice service.'' These definitions require defining ''voice service,'' which we base on the definition in section 5 of the SCA. That provision references section 4(a) of the TRACED Act, which defines ''voice

service'' as ''any service that is interconnected with the public switched telephone network and that furnishes voice communications to an end user using resources from the North American Numbering Plan,'' including transmissions from facsimile machines and computers and ''any service that requires internet protocol-compatible customer premises equipment . . . and permits out-bound calling, whether or not the service is one-way or two-way voice over internet protocol.'' No commenter opposed this proposal. We also note that the Commission interpreted the TRACED Act definition when implementing that Act's requirements, and chose to mirror the definition in its rules.

120. *Call.* The SCA does not define the term ''call,'' nor does the Communications Act. Consistent with our proposal in the *Safe Connections NPRM,* solely for purposes of implementing section 5(b)(3) of the SCA, we elect to define a ''call'' as a voice service transmission, regardless of whether such transmission is completed. Given the expansive definition of ''voice service,'' which we define without regard to whether the service is wireline or wireless, this term sufficiently captures the means by which survivors would use the public switched telephone network to reach covered hotlines. Although we suspect that only completed transmissions would appear on call logs, out of an abundance of caution in deference to the safety concerns of survivors, we will include completed and uncompleted transmissions in the definition of ''call.'' No commenter opposed this proposal.

121. *Text Message.* Section 5(a)(7) of the SCA defines ''text message'' as having the same meaning as in section 227(e)(8) of the Communications Act, and we adopt the same definition consistent with our proposal in the *Safe Connections NPRM.* Section 227(e)(8) defines ''text message'' as ''a message consisting of text, images, sounds, or other information that is transmitted to or from a device that is identified as the receiving or transmitting device by means of a 10-digit telephone number'' and includes short message service (SMS) and multimedia message service (MMS) messages. This definition explicitly excludes ''message[s] sent over an IP-enabled messaging service to another user of the same messaging service'' that do not otherwise meet the general definition, as well as ''real-time, two-way voice or video communication.'' When the Commission previously interpreted section 227(e)(8) for purposes of implementation, it adopted a rule that mirrors the statutory text, and we do the same here, as proposed in the *Safe Connections NPRM.* No commenter opposed adoption of this definition. Similar to our analysis with respect to uncompleted calls, out of an abundance of caution in deference to the safety concerns of survivors, we will include delivered and undelivered text messages in the definition of ''text message.''

122. *Covered Hotline.* The SCA defines the term ''covered hotline'' to mean ''a hotline related to domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act.'' We adopt this definition, and further clarify what constitutes a ''hotline'' and how much of the counseling services and information provided on the ''hotline'' must relate to ''domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act[s]'' for the ''hotline'' to be a ''covered hotline.''

123. As an initial matter, we note that in providing these clarifications, we strive to meet the broadest reasonable expectations of a survivor seeking to place calls and send text messages without fear that they will appear in logs. Commenters uniformly supported this approach. Turning to the specific definition, we conclude that a ''covered hotline'' need not exclusively provide counseling and information to serve domestic violence survivors; for instance, the hotline could provide services to individuals in need of other types of support unrelated to domestic violence or other related issues under the SCA. Such a single subject requirement would be overly restrictive and potentially exclude some hotlines that provide essential services to domestic violence survivors. Accordingly, we define ''covered hotline'' as any hotline that provides counseling and information on topics described in the SCA's definition of ''covered hotline'' as more than a *de minimis* portion of the hotline's operations. No commenter opposed this approach.

124. We next conclude that the counseling service associated with the pertinent telephone number must be a ''hotline.'' Given the SCA's definition of ''covered hotline,'' as well as the potential use of a central database of ''covered hotlines'' (calls and text messages which would be omitted from customer-facing logs), we interpret ''hotline'' generally to mean a telephone number from which counseling and information is provided. The SCA appears to acknowledge this by equating the adjective ''covered'' to the topics, which, in this case are ''domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, [and] . . . other similar act[s].'' We suspect, however, that certain telephone numbers may serve as ''hotlines'' and also be used for other purposes, such as the main telephone number for the organization providing the counseling and/or information service. We conclude that telephone numbers should not be excluded from being ''covered hotlines'' merely because they do not serve exclusively as ''hotlines.'' We find that we can best achieve the goal of minimizing hotline hesitancy by interpreting ''hotline'' as broadly as possible, and therefore interpret it to include numbers on which an organization provides anything more than a *de minimis* amount of counseling service and will use this standard as a component in our definition of ''covered hotline.'' No commenter opposed this approach and several supported it.

125. The Commission proposed in the *Safe Connections NPRM* to delegate to the Bureau the task of providing further clarification, as necessary, of the scope and definition of ''covered hotline,'' in light of the novelty of overseeing a central database of covered hotlines, and to maximize the efficiency in resolving future matters of interpretation under these provisions of the SCA. We adopt this unopposed proposal.

126. *Consumer-Facing Logs of Calls and Text Messages.* The SCA does not define the term ''consumer-facing logs of calls or text messages.'' In light of our goal of minimizing any hesitancy by survivors to contact hotlines by preventing abusers from being made aware of survivors' calls and text messages to hotlines, we seek to define the term as broadly as possible. We therefore define such logs, consistent with the proposal in the *Safe Connections NPRM,* as any means by which a service provider presents to a consumer a listing of telephone numbers to which calls or text messages were directed, regardless of, for example, the medium used (such as by paper, online listing, or electronic file), whether the calls were completed or the text messages were successfully delivered, whether part of a bill or otherwise, and whether requested by the consumer or otherwise provided. In addition, our definition includes both oral disclosures of call and text message information that would appear in consumer-facing logs of calls and text messages (likely through customer service representatives) and written

disclosures by service providers of individual call or text message records. We exclude from this definition any logs of calls or text messages stored on consumers' wireless devices or wireline telephones, such as recent calls stored in the mobile device's phone app or lists of recently dialed numbers on cordless wireline handsets. The provisions of the SCA regarding the protection of calls and text messages to hotlines appear to apply to call logs under the control of pertinent service providers, not logs that might be generated by or stored on the wireline or wireless device. Thus, the obligation to protect the privacy of calls and text messages to hotlines would still apply to call and text logs accessed on a smart phone or other device through service provider apps or websites. No commenter opposed this approach and several supported it.

127. *Wireline Provider of Voice Service.* As discussed above, we conclude that we should extend the obligation to protect the privacy of calls and text messages to hotlines to fixed wireless providers of voice service and to fixed satellite providers of voice service, in addition to ''covered providers'' and ''wireline providers of voice service'' as identified in the SCA. Because including such providers in our rules requires new definitions, we conclude that to maintain maximum clarity, we should also define the term ''wireline provider of voice service.'' Such term is defined neither in the Safe Connections Act nor the Communications Act. We adopt as our definition, solely for purposes of our rules implementing the Safe Connections Act, as ''a provider of voice service that connects customers to its network primarily by wire.'' We believe that this definition captures what is ordinarily considered to be a ''wireline provider,'' allowing for intermediate legs of wireless transport, such as by microwave.

128. *Fixed Wireless Provider of Voice Service.* Solely for purposes of our rules implementing the Safe Connections Act, we define the term ''fixed wireless provider of voice service'' to mean ''a provider of voice service to customers at fixed locations that connects such customers to its network primarily by terrestrial wireless transmission.''

129. *Fixed Satellite Provider of Voice Service.* Solely for purposes of our rules implementing the Safe Connections Act, we define the term ''fixed satellite provider of voice service'' to mean ''a provider of voice service to customers at fixed locations that connects such customers to its network primarily by satellite transmission.''

3. Creating and Maintaining the Central Database of Hotlines

130. The SCA directs the Commission to consider whether and how to establish a central database of hotlines related to domestic violence, dating violence, stalking, sexual assault, human trafficking, and other related crimes, which could be updated monthly and used by providers to determine the covered hotline for which they must remove records from their customer-facing logs. Commenters strongly supported establishing a central database. Establishing a central database will provide certainty as to which call-log records are to be suppressed, thus fulfilling the SCA's objective to protect survivors while also clarifying service providers' compliance obligations.

131. The record supports either the Commission's or a third party's creating and administering the database, but no commenters addressed how the costs incurred by a third party administrator would be recovered. Parties have made a variety of suggestions for engaging with stakeholders, and have noted the complexity of the process. We believe that these decisions are worthy of further consideration, and we therefore delegate to the Bureau, working in conjunction with the Office of the Managing Director (including the Office of the Chief Information Officer (OCIO)) and the Office of General Counsel (including the Senior Agency Official for Privacy (SAOP)), the matter of determining the administrator for the database consistent with the determinations we make in this document. We direct the Bureau to announce the administrator details, and adopt any necessary rules, through a Public Notice or other appropriate means. The Bureau should not select an option that would require recovering costs for the administrator through an assessment on service providers, as we find that such an option would unnecessarily delay establishing the database. We also decline at this time to refer technical details of the database to the North American Numbering Council (NANC), as suggested by CTIA. The Bureau should work with stakeholders as it manages the process of selecting an administrator (whether it be self-provisioned, through a third party, or some combination thereof) and establishing the database. If the Bureau later concludes that input from the NANC is warranted, it will seek out such input.

132. In addition, the Commission also delegates authority to the Bureau, working in conjunction with the Office of the Managing Director (including OCIO) and the Office of General Counsel (including the SAOP), to address all administrative and technical matters relating to the creation and maintenance of the database that are not prescribed in this document. We expect the implementation process could involve complex legal, administrative, or technical questions, and we find that it is important to retain flexibility to address such issues as they arise. This is consistent with the approach the Commission has taken in other areas when overseeing the implementation of new programs such as the Broadband Data Collection and Robocall Mitigation Database.

133. We find that the database should always be as comprehensive and accurate as possible so as to best fulfill the expectations of survivors that their calls and text messages to hotlines will not appear in service provider's consumer-facing call logs. In this regard, we direct the Bureau to work with experienced stakeholders to help in identifying hotlines for the database administrator to include in the database, and developing procedures for updating the database; we direct the Bureau to establish procedures that will enable submissions by both operators of hotlines and from third parties. We likewise direct the Bureau to consider how best to verify the accuracy of submissions while balancing administrative concerns such as the need to initiate use of the database as soon as possible. Should the Bureau elect to use a third party to serve as the database administrator, the Bureau, not the third party, will have final authority over determining whether particular potential database entries are ''covered hotlines.''

134. While we recognize that comprehensiveness and accuracy are key elements in database design and administration, the safety of survivors of domestic violence is paramount and should be taken into account in all database-related decisions and administration. As a result, we conclude that the database should not be made publicly available, as proposed in the *Safe Connections NPRM.* As the NDVH argues, providing convenient public access to such a large database of telephone numbers through which all manner of domestic violence survivor assistance is made available provides opportunities for abusers to interfere with survivors' ability to place calls and send texts to hotlines in the database by a variety of means, thereby undermining the purpose for which we are establishing the database (to enable protection of the privacy of calls and text messages to hotlines). While we

acknowledge, as the *Safe Connections NPRM* did, that making the database publicly available could potentially improve the accuracy of the list and be a resource for survivors, we find the benefits of making the database publicly available are outweighed by the potential harms to survivors as identified by the NDVH.

135. Consistent with our concerns regarding the sensitivity of the database, we direct the Bureau to ensure that access to the full database file is available only to covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service through secure means. Recognizing the potential value of the database to governmental agencies with general subject matter jurisdiction (law enforcement and health and human service-type agencies), however, we direct the Bureau to also permit such agencies access to the full database file through secure means as long as an administratively reasonable method of determining eligibility for access can be arranged. Moreover, although the database itself will not be publicly accessible, survivors still will be able to view the administrator's public website, and we therefore direct the Bureau to consider a means by which the administrator's website could identify, for survivors' benefit, any covered service provider that has been granted a technical-infeasibility exception from the call-log obligation, as well as any service providers that have been granted an extension of the compliance deadline. More generally, we encourage the Bureau to consider the possibility of designing a limited form of access for survivors to determine whether a call that they are about to make or a text that they are about to send to a hotline will not appear in a call log. To this end, we direct the Bureau to explore creating a web-based lookup feature that would allow survivors to determine if a particular number appears in the database while, at the same time, preventing such a lookup feature being exploited by bad actors to reverse-engineer the full list of hotlines. Such a feature may also permit operators of hotlines to determine if their number has been properly included.

4. Using the Central Database of Hotlines

136. *Service Provider Compliance Deadline.* For ease of discussion, we use the term ''compliance deadline'' to refer to the effective date of our rules regarding the protection of the privacy of calls and text messages to hotlines. The record reflects the urgency of issues faced by survivors of domestic abuse. Survivors need to place calls and send text messages to hotlines without fear of discovery (and potential reprisal) by their abuser as soon as possible as such calls and text messages save lives. Further, no party claims that the implementation challenges faced by service providers, which in some cases appear to be complex, are insurmountable. At the same time, there are important administrative milestones on which a successful database rollout depends. Although the Commission sought comment in the *Safe Connections NPRM* on how long service providers would take to implement the requirements that it proposed, the record has only one specific proposal, a request for at least 24 months for smaller carriers. Balancing the immediate need to provide help to survivors of domestic violence with the potential complexity of implementing systems to comply with our consumer-facing call log rules, we believe that 12 months from the date of publication of this document in the **Federal Register** is a reasonable timeline for all but the smaller service providers, particularly because the record lacks evidence that it would take such providers longer. We therefore adopt a 12-month compliance deadline.

137. We delegate to the Bureau the responsibility of implementing this compliance deadline and communicating with all stakeholders about progress towards completing the database, associated milestones, and service provider requirements, consistent with the decisions in this document. In establishing this timeline, we recognize the need for service providers to have the necessary detail as early as possible for designing their systems and to be able to test the database files in such systems prior to full implementation. In this regard, we also establish two milestones affecting the final compliance deadline. First, the compliance deadline will be no earlier than eight months after the Bureau has published the database download file specification, which should be the final detail necessary for service providers to complete design of their systems. Second, the compliance deadline will be no earlier than two months after the Bureau announces that the database administrator has made the initial database download file available for testing. In light of the compliance deadline being no less than two months after the availability of the initial database file for download, we do not condition such deadline on any approval by OMB review under the PRA of any data collection necessary to create the database. This is because any necessary approval would have to occur prior to creation of the initial database file. To the extent that the date of either announcement causes the deadline to be later than 12 months after **Federal Register** publication, the Bureau should provide notice of the new compliance deadline for implementation based on the date of the announcement. Given the potential unpredictability of the implementation process, including development of the database, we delegate authority to the Bureau to extend the compliance deadline as necessary. Although we delegate such details to the Bureau, we observe that the most likely form of the database file would be comma separated value (CSV) formatted with three fields for each database record: (1) a seven-digit integer representing a unique record identifier; (2) a ten-digit integer representing the hotline telephone number; and (3) the date, in yyyy/mm/dd format, representing the vintage of database file in which the hotline was added to the database.

138. Thus, for example, if the Bureau's announcement of the availability of the initial download file for testing were not to come until 11 months after publication of this document in the **Federal Register**, the Bureau would announce that the compliance deadline has become 13 months after **Federal Register** publication—in this example, continuing to ensure that service providers have two months to test the file. We note that this second database implementation milestone cannot be met without a database administrator having been selected and well-established. Service providers will be assured at least an eight-month period between the availability of the database download file specification and their compliance deadline. As a result, service providers will not be prejudiced by any potential delay introduced by deferring the determination of who should administer the database to a later decision by the Bureau.

139. For smaller service providers, we adopt a compliance deadline of 18 months from the date of publication of this document in the **Federal Register** to comply with our new rules on consumer-facing call logs. We find that granting smaller providers extra implementation time is appropriate, given that they may face more resource challenges than larger providers in complying with the new rules, and consistent with the SCA's charge to the Commission to consider ''factors that may impact smaller providers.'' The 18-

month period is less than the 24 months sought by CCA, but we find that our 18-month compliance deadline for small providers properly balances the significance of the risks faced by domestic abuse survivors, and the benefits of them being able to call hotlines and seek help without fear of the abuser accessing their call records, against the implementation challenges faced by smaller providers.

140. We define a small provider as ''a provider that has 100,000 or fewer voice service subscriber lines (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the provider's affiliates).'' We find it appropriate to adopt the definition of ''small voice service provider'' that the Commission adopted for the purpose of creating a delayed deadline for such providers to implement the Commission's call authentication rules stemming from the TRACED Act and in defining which small service providers are exempt from certain rural call completion rules. In both cases, the Commission was establishing rules relating to service providers' processing of calls, which is relevant to the rules for protecting the privacy of calls and text messages to hotlines, and the Commission considered the 100,000-line threshold to appropriately balance the need for implementation with the rules with burdens on small service providers. We believe that for the same reasons, a 100,000-line threshold is appropriate here. We reject CCA's proposal to define small providers as those that do not provide nationwide service. We find that the ''small provider'' definition we adopt is better established by Commission precedent, creates more administrative certainty as it obviates the need for the Commission to make determinations as to what constitutes ''nationwide'' service, and fosters technological neutrality given that it will not discriminate between wireline providers, none of which have ''nationwide'' service areas, and wireless providers, some of which may. CCA claims that the Commission has made the nationwide/non-nationwide distinction in public safety proceedings, but CCA's cited examples are only to proposals on which the Commission sought comment, and, in any event, were not seeking to define the term ''small provider,'' a term used in the Safe Connections Act.

141. We recognize that in extending the compliance deadline for small service providers, we need to ensure that this translates to additional system development time after the data file specification is announced. As a result, the compliance deadline for small service providers will in no case be earlier than 14 months after the Bureau has published the database download file specification, ensuring that small service providers will have sufficient time to complete design of their systems. Further, exercising an abundance of caution, the compliance deadline for small service providers will be no earlier than two months after the Bureau announces that the database administrator has made the initial database download file available for testing for larger service providers.

142. Creating a later compliance deadline for small service providers, however, will lead to a six-month period in which some survivors' calls and text messages to hotlines will be omitted from call logs (those served by non-small providers) while calls and text messages of other survivors (those served by small providers, likely the vast minority of survivors) will not. To minimize confusion, we direct the Bureau to consider creating a means by which survivors can determine on the database administrator's website whether their service provider is currently (at the time of inquiry) required to comply with the obligation to protect the privacy of calls and text messages to hotlines.

143. We also provide clarity regarding the relationship between compliance deadlines and the dates of particular calls and text messages that may be subject to our rules. We recognize that service providers may maintain two kinds of relevant call logs: (1) online consumer-facing logs, and (2) consumers' bills (whether electronic or paper), which we also consider to be logs. We also recognize that, as of a service provider's compliance deadline, the service provider's online consumer-facing logs will include records of calls and text messages from prior to the compliance deadline—and, in the ordinary course of business, such service provider may continue to make such online logs of pre-compliance deadline calls and text messages available for potentially multiple months. These online call logs may be difficult to retroactively revise. Similarly, we acknowledge that consumers' bills that pertain exclusively to periods before the compliance deadline may remain available on service providers' websites on and after the compliance deadline. Not only might it be difficult for service providers to retroactively revise such bills, but such bills may have already been emailed or physically mailed to the account holder.

144. Balancing these considerations, we establish the following requirements. With respect to online consumer-facing logs, we clarify that, after a service provider's compliance deadline, such logs may continue to display records of calls and text messages to hotlines that were placed or sent prior to a service provider's compliance deadline. That same service provider's online consumer-facing logs, however, must omit calls and text messages to hotlines that were placed or sent on or after the compliance deadline. With respect to consumers' bills, we clarify that bills for periods exclusively before the compliance deadline need not omit calls placed to and text messages sent to hotlines omitted. For bills that include calls and text messages both before and after the compliance deadline, service providers need only omit calls placed to and text messages sent to hotlines on or after the compliance deadline. Service providers are also welcome to voluntarily omit such calls and texts for all days in such bills. Bills exclusively for periods on or after the compliance deadline must fully comply with our rules. With regard to other written and oral disclosures of information regarding calls placed to and text messages sent to hotlines, our rules apply only to such calls and text messages placed or sent on or after the compliance deadline.

145. *Database Updates.* As proposed in the *Safe Connections NPRM* and consistent with the SCA, we require service providers to download the central database once it is established, and thereafter to download updates from the central database once per calendar month. This is necessary to ensure service providers stay up to date on the covered hotlines in order to abide by their call-log removal duties. We anticipate new covered hotlines will be added to, and potentially removed from, the central database on an ongoing basis, so regular downloading of the updated database will be necessary. Commenters broadly supported a monthly download requirement, which strikes a balance between requiring providers to stay current but not requiring constant updates. To make updates easier, we direct the Bureau to work with the database administrator to set a fixed date each month (for example, the 1st or 15th of the month) when it will update the database, so providers can schedule their monthly downloads of the updated database accordingly. Service providers will be required to download and implement their monthly downloaded updates in their systems within 15 days of the

release of these new monthly updates. We decline USTelecom's request to permit providers to perform database updates ''any time within the month after the central database is updated.'' Because we do not believe manual updates will be required, as USTelecom posits, we find that 15 days will be sufficient for providers to download the necessary updates for use in their systems.

146. *Penalties, Safe Harbor, and Interplay With Other Laws and Regulations.* We conclude that we should not establish special penalties for violations of our rules pertaining to protecting the privacy of calls and text messages to hotlines. We believe that the relative novelty of the requirements that we establish make appropriate penalties difficult to assess in advance and are likely, at least initially, to be best assessed on a case-by-case basis. Thus, we conclude that, contrary to EPIC et al.'s suggestion, we should rely on pre-existing penalties and enforcement mechanisms, but will revisit this topic in the future if such mechanisms prove to be insufficient.

147. Some service providers have raised concerns about facing civil liability for unintentional errors or failures in removing calls and text messages to covered hotlines from their call logs, and recommended the Commission establish a ''safe harbor'' in this area. As an initial matter, we note that the SCA already establishes a safe harbor from civil liability for providers that update their databases every 30 days to match the Commission's central database. The rules that we establish make clear that covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service need omit from consumer-facing call and text logs only calls and text messages to numbers that appear in the database. Thus, as long as these providers are faithfully downloading updates to the database and have properly implemented systems for redacting calls and text messages to such numbers from consumer-facing call logs, they will not be in violation of our rules. Put another way, such providers will not have an independent duty to authenticate and verify the accuracy of the central database.

148. Commenters have raised examples of laws and regulations that service providers might arguably violate through their compliance with the privacy rules that we establish for the protection of calls and text messages to hotlines. In response, and consistent with the principle that subsequent, more specific statutes control in the event of a conflict with earlier broader statutes, we make clear our intent that the rules we adopt here to implement the SCA supersede any conflicting requirements in the Communications Act, other Commission rules, or state requirements. This would include the requirement in section 222(c)(2) of the Act that a telecommunications carrier disclose CPNI to the customer upon request. However, we remind parties that pursuant to section 5(b)(3)(C) of the SCA, the rules that we adopt in this document pertaining to the protection of calls and text messages to hotlines do not alter service provider obligations under CALEA.

149. We decline to adopt a number of requests and recommendations put forth by EPIC et al. pertaining to matters that extend beyond implementation of the SCA. For example, EPIC et al. asks that we require providers to help survivors detect/delete stalkerware from phones and investigate dual-use tracking apps that can double as stalkerware, compile list sources of Commission authority over stalkerware. We decline to adopt these proposals, which fall outside the scope of the SCA and *Safe Connections NPRM* and raise complex issues on which we have no record other than EPIC et al.'s request.

### *C. Emergency Communications Support for Survivors*

150. We designate the Lifeline program as the program that will provide emergency communications support for survivors. As further detailed below, we also define financial hardship to allow survivors to receive this support, establish the application and enrollment processes for qualifying survivors, and address additional implementation challenges.

#### 1. The Designated Program for Emergency Communications Support

151. The SCA requires the Commission to designate either the Lifeline program or the Affordable Connectivity Program to provide emergency communications support to survivors who have pursued the line separation process and are suffering from financial hardship, regardless of whether the survivor might otherwise meet the designated program's eligibility requirements. Given this requirement and the record before us, we designate the Lifeline program to provide emergency communications support to impacted survivors. The Lifeline program allows participants to receive discounts on voice-only service, broadband service, or bundled service. The ACP does not allow consumers to receive a discount on voice-only services. We believe the flexibility offered by the Lifeline program to support voice-only services makes the program uniquely valuable for survivors, who may be experiencing significant disruption in their lives and need the ability to choose a voice-only service to help them reach other social support services.

152. While ''emergency communications support'' is not defined by the SCA, we construe the Act's references to emergency communications support to be the time-limited support offered to survivors suffering financial hardship through the designated program. We note that one commenter suggested that the Commission allow survivors to choose either the ACP or Lifeline. We do not believe we have the authority to pursue that option given the SCA's specific direction to designate a ''single program.'' In addition, in its comments, the National Lifeline Association (NaLA) also advocated for additional Lifeline reforms including increasing the Lifeline support amount, acting on pending Lifeline compliance plans and petitions for Eligible Telecommunications Carrier (ETC) designation, eliminating minimum service standards for Lifeline service, expanding Lifeline to support consumer devices, limiting Lifeline subscribers' ability to transfer their benefit, and limiting provider liability for noncompliance with our rules. As these issues are not the focus of this proceeding and were not raised in the *Safe Connections NPRM,* we decline to address them in the Report and Order.

153. Particularly in light of the SCA's focus on enabling survivors to establish connections independent from their abusers, we recognize the importance of allowing qualifying survivors to choose to apply their emergency communications support benefit to a voice-only option. Voice services are ubiquitous and provide reliable access for reaching necessary support services and, if necessary, accessing emergency services. Additionally, real-time human voice communications can provide connection, comfort, and reassurance to the survivor during a time of upheaval and new challenges. By designating Lifeline as the emergency communications support program under the SCA, we enable survivors to maintain their voice-only service connection if they so choose.

154. In addition to voice services, Lifeline also provides discounts on broadband services, which may be equally essential in different ways to many survivors as they research support services for assistance as they flee their

abusers. While both Lifeline and the ACP allow consumers to receive bundled support, the Lifeline program offers the greatest flexibility for survivors. As such, by selecting the Lifeline program, we are providing survivors with the option to access either or both of these crucial communications services, broadband and voice, giving survivors the security and autonomy we believe that Congress intended with the Safe Connections Act.

155. The maximum Lifeline discount for voice-only services is currently set at $5.25, and further phasedown in that support level is currently paused. To ensure the designated program best serves qualifying survivors, we believe that the Lifeline program should offer survivors the maximum base Lifeline discount, even for voice-only services. As noted in the *Safe Connections NPRM,* we also believe that survivors receiving emergency communications support should be able to benefit from the Lifeline program's enhanced Tribal benefit if they reside on qualifying Tribal lands. As such, we modify our rules at § 54.403 to allow survivors to receive support of up to $9.25 per month for all qualifying Lifeline services and up to a $34.25 monthly discount on Lifeline-supported services for survivors residing on qualifying Tribal lands. Regardless of any future changes to the reimbursement amount for voice-only services in the Lifeline program, we believe that survivors' needs present a unique situation that should permit survivors choosing voice-only plans to receive the full Lifeline reimbursement amount for which they are eligible. This level of support will be limited to the survivor's six-month emergency communications support period. If a survivor is eligible to participate in the Lifeline program beyond their initial emergency support period, and they choose to subscribe to a voice-only plan, then they will receive the voice-only discount applicable for all non-Tribal Lifeline subscribers, which is currently $5.25. Survivors on qualifying Tribal lands still qualify for the enhanced Tribal benefit.

156. USTelecom urges the Commission to limit this enhanced support opportunity for voice-only services to only mobile wireless service plans. We decline to adopt such a limitation. The SCA requires that survivors pursue a line separation request that meets the requirements under section 345(c)(1) before receiving emergency communications support, but it does not limit the type of service that a survivor can then receive after completing that line separation request. Additionally, the SCA's direction to the Commission to designate either the Lifeline program or the ACP, which both allow eligible households to apply their benefit to fixed service, indicates that survivors enrolling in the designated program pursuant to the SCA should be afforded the same choice. We also believe that imposing this suggested limitation would not serve the public interest. Further, we believe that the implementation concerns raised by USTelecom will be minimized by our direction to USAC to identify survivor enrollments in its systems, which will not only allow service providers to treat survivor information with heightened sensitivity, but will also give service providers the appropriate insight necessary to determine whether a consumer is a survivor eligible to receive up to $9.25 in support for voice-only services.

157. We note that some commenters expressed support for the ACP as the designated program because it offers a higher monthly benefit amount. While we certainly recognize that as an advantage of the ACP, we believe that the Lifeline program overall offers the better longer-term solution for survivors because of its ability to support voice-only services and because of its stable funding source. We also believe that our efforts to expand the Lifeline benefit amount for voice-only support help to address the concerns raised by these commenters regarding the difference in the program benefit amounts.

158. In addition to being unable to support voice-only services, the ACP has a finite source of funds and its continuation is dependent upon additional congressional appropriations. Therefore, the ACP does not present the same long-term funding stability as the Lifeline program. Consumers eligible for the Lifeline program are also eligible to participate in the ACP, pursuant to the Infrastructure Investment and Jobs Act (Infrastructure Act), and the amendments to the Lifeline rules that we make in this document preserve that option for survivors enrolling in Lifeline pursuant to the SCA as well. We believe it is appropriate, however, to limit this combined Lifeline and ACP support to the emergency communications support period of six months because adhering to the time limitation is consistent with both the language and intent of the SCA. This will protect program integrity and target limited funding where it is most needed. Survivors will have the opportunity to confirm their eligibility to participate in Lifeline and/or ACP under each respective program's existing eligibility criteria as they approach the end of their emergency support periods, as detailed below.

159. Some commenters identified the Lifeline program's requirement that service providers be designated as Eligible Telecommunications Carriers (ETC) as a drawback of designating the Lifeline program for emergency communications support, with one commenter briefly suggesting that the Commission exempt carriers from the ETC requirement to allow more service providers to support survivors in the emergency communications period. The ETC requirement is a statutory requirement and cannot be waived. The ETC requirement is also a critical oversight component of the Communications Act, and the record here does not include the level of analysis required for us to consider whether forbearance would be appropriate or warranted. Furthermore, as we discussed above regarding line separations, the Safe Connections Act prohibits providers from limiting or preventing survivors from porting their line to another service provider. Therefore, survivors have the ability to port their line to a service provider that is designated as an ETC. Survivors will be able to receive the intended emergency support by receiving service from ETCs in the Lifeline program. Any service provider that is not currently an ETC but wishes to support survivors eligible for benefits under the SCA can do so by obtaining designation as a Lifeline-only ETC from the relevant state commission or the Commission, as applicable, and we encourage providers to do so. Providers participating in the ACP are not required to be ETCs. Because we permit survivors that qualify for emergency communications support through Lifeline to enroll in ACP, survivors benefitting from emergency communications support through ACP can receive ACP service from non-ETCs in addition to Lifeline service from an ETC.

160. In the *Safe Connections NPRM* we sought comment on the impact of the designated program's benefit as it pertains to survivors' access to devices. There was limited discussion of this issue among commenters, but some commenters advocated for support for devices through the SCA designated program or suggested that the Commission take steps to incentivize service providers to provide devices to survivors. Historically, the Lifeline program has not generally supported devices, and on balance here, we believe it would be appropriate to continue focusing Lifeline funding on the subscriber's service offering. This approach is consistent with the Commission's long-standing approach

in other universal service programs, which also do not fund end-user devices. One commenter suggested that the Commission should create a pilot device program for survivors, but we believe that the limited duration of emergency communications support cautions against funding devices. We are aware that certain providers and community organizations have provided survivors with access to free devices, and we are supportive of those efforts, but we do not believe it would be appropriate to support devices for survivors through the Lifeline program. Although the Lifeline program does not offer support for devices, if survivors who qualify for the Lifeline program use that qualification to enroll in the ACP, then they may avail themselves of the connected device benefit available under the ACP.

2. Defining Financial Hardship

161. As proposed in the *Safe Connections NPRM,* we define ''financial hardship'' to largely mirror the ACP's eligibility requirements as outlined in the Infrastructure Act. Defining financial hardship in this way gives survivors greater flexibility to confirm their status, and we hope that this more expansive definition for financial hardship will enable greater participation for survivors. Consumers can qualify to participate in the ACP if they participate in certain Federal assistance programs or if their household income is at or below 200% of the Federal Poverty Guidelines. These eligibility standards are more expansive than the standards used by the Lifeline program, which allows consumers to qualify for the program through participation in fewer Federal assistance programs or if their household income is at or below 135% of the Federal Poverty Guidelines. We believe that adopting this more expansive approach in our definition of financial hardship allows the emergency communications support effort to reach a wider range of survivors, as contemplated by the SCA. Indeed, Congress noted in its findings that survivors often face significant financial insecurity. In adopting this approach, however, we decline to allow survivors who participate in a provider's existing low-income program, which are based on the provider's own eligibility criteria, to use that participation as a basis for demonstrating financial hardship. The Lifeline program has not historically relied on provider-specific eligibility criteria, and the record does not provide a basis for concluding that such programs are prevalent among Lifeline providers, or that these programs would be a predominant qualifying program for survivors given the other expansive qualifying criteria.

162. With the definition of financial hardship that we adopt in this document, we believe that we are aligning with the spirit of the congressional findings in the SCA and commenter concerns in our record. We also note that in addition to demonstrating financial hardship, survivors are also required by the SCA to meet the requirements of section 345(c)(1), which details the process for a survivor completing a line separation request. We anticipate that the documentation confirming submission of a valid and completed line separation request as detailed above will be sufficient to satisfy the requirement that survivors seeking to receive emergency communications support must have pursued a line separation request and, when paired with some substantiation of financial hardship, will allow us to ensure compliance with the SCA's limitations for receiving emergency communications support.

163. Though there are no significant comments in the record offering a specific definition of financial hardship, there is some support among commenters for the Commission implementing an approach that would presume that all survivors suffer financial hardship. We decline to implement this approach. Although (as noted) Congress found in the SCA that ''survivors *often* lack meaningful support and options when establishing independence from an abuser, including barriers such as financial insecurity,'' that finding indicates that not all survivors face financial hardship. A presumption of financial hardship for all survivors for purposes of qualifying for emergency communications support would be inconsistent with this finding. In addition, and most critically, the SCA specifically states that survivors may qualify for emergency communications support if the survivor attempts a line separation request with their communications service provider *and* they are suffering financial hardship. A presumption of financial hardship for all consumers applying for the Lifeline benefit through the SCA would fail to give effect to the second qualification prong established by the statute, and would also pose an unacceptable risk to the program's integrity. We therefore do not adopt such a presumption, but we take steps to streamline the application process for survivors seeking to qualify for emergency communications support.

164. As further discussed below, we believe that the use of the National Verifier for all applications for emergency communications support will allow for the most streamlined process for survivors and will best protect program integrity by ensuring a unified review process. As our definition of financial hardship will largely align with the eligibility standards for the ACP, the National Verifier and its connections to relevant state databases may allow for automatic confirmation of a survivor's financial hardship status. In instances where an individual's eligibility cannot be determined through these database connections, however, we believe that it is appropriate to allow survivors to self-certify their financial hardship in the National Verifier. By allowing self-certification of financial hardship, we recognize that survivors often lack access to financial documentation to verify their financial hardship and could place themselves in danger if they made an attempt to access such documentation. Currently, if a consumer cannot automatically confirm their participation in a qualifying Federal assistance program through USAC's database checks, then they must submit appropriate documentation to USAC that demonstrates their participation in the relevant program. The SCA, however, requires that the Commission allow survivors' entrance into the designated program regardless of their ability to otherwise participate in the program. With a self-certification approach, we offer that greater flexibility and also protect program integrity by securing a self-certification under penalty of perjury from the survivor. By combining a self-certification approach with the use of the National Verifier, we can reduce the barriers of participation for survivors and help survivors access the benefits of the designated program ''as quickly as is feasible.'' To implement this process, we direct the Bureau to work with USAC to develop standardized self-certification documentation and implement changes to USAC's application workflows to allow for survivors from across the United States to easily enter the program through the National Verifier. In implementing the application and certification process, we direct the Bureau and USAC to ensure that those processes are appropriately accommodating and user-friendly for survivors while still protecting program integrity.

165. We believe that concerns about the risks of a self-certification approach to program integrity are mitigated by the statutory limitation of emergency communications support to survivors who are seeking to separate a line from

a shared mobile service contract and meet the line separation requirements discussed above, and the temporary nature of the emergency communications support benefit. First, the SCA mandates that survivors seeking to receive emergency communications support through the designated program also demonstrate that they have met the line separation requirements of section 345(c)(1). That statutory requirement means that survivors will have to compile and submit documentation of their abuse in order to pursue a line separation request. Satisfying such an obligation will protect Lifeline program integrity, as survivors should be a small subset of the overall population, and those receiving emergency communications support will be an even smaller subset of those survivors as these survivors would have to pursue a line separation request and be suffering financial hardship. Second, the SCA limits survivor participation in the designated program to six months, also limiting the potential impact on the Lifeline program's resources. Between these two requirements for receiving emergency communications support, we believe that permitting self-certification for the financial hardship component strikes the best balance between program integrity concerns and ensuring that survivors have access to vital connectivity services.

166. One commenter suggested that if the Commission adopted a self-certification approach for survivors documenting their financial hardship, then the Commission should determine that National Verifier review of such documentation provides an ''ironclad safe harbor for service providers.'' We decline to adopt this approach. The National Verifier relies on the information it receives from service providers, and while it is an important tool for protecting program integrity, to say that approval by the National Verifier creates a safe harbor for provider activity would open the program to potential service provider abuse. Service providers remain responsible for implementing policies that ensure compliance with the Lifeline program's rules, and this includes, among other things, implementing policies that ensure that information received by the National Verifier is accurate. The Commission has never intended for the National Verifier to be a safe harbor, and we do not believe that it would be appropriate to implement such an approach here. If service provider policies, when implemented in conjunction with the National Verifier, are found to be inadequate for ensuring that a subscriber is eligible to receive Lifeline service, then such service provider may be subject to recovery action from USAC or forfeiture efforts from the Commission's Enforcement Bureau.

167. In the *Safe Connections NPRM,* we sought comment on how we might be able to address survivors with a temporary financial hardship. These are survivors who might have a reliable source of income that would otherwise not qualify them to meet our definition of financial hardship but may be facing a short-term, acute financial strain as a result of experiencing or escaping domestic violence or abuse. We received no specific comments on how we might treat survivors suffering temporary financial hardship. While we understand the challenges that these individuals might encounter, we do not believe it would be appropriate to allow entry into the program based only on a position of temporary financial hardship. In the case of a temporary financial hardship, a benefit that extends for six months could significantly outlast the subscriber's actual financial hardship and see the program supporting an individual with significant financial resources. Making the emergency communications support available in that situation would be inconsistent with the conditions established in the SCA and would be an ineffective use of limited USF funding. We also do not have a reliable way of confirming temporary financial hardship, so implementing such an approach would raise significant program integrity concerns. For these reasons, we decline to define financial hardship to include temporary financial hardship.

3. Program Application and Enrollment

168. In the *Safe Connections NPRM,* we proposed that survivors entering the designated program be required to use the National Verifier to have their eligibility to participate in the program confirmed by USAC. We adopt this proposal and direct USAC to allow for such an approach for survivors living in all states, including the National Lifeline Accountability Database (NLAD) opt-out States of California, Texas, and Oregon. There was limited discussion of this issue in the record, but NaLA and USTelecom both supported such an approach. We believe that this approach will create a more streamlined application and enrollment experience for survivors. It will also allow USAC to better protect program integrity. USAC will be able to develop a greater understanding of the material provided by service providers after an attempted line separation request, and, therefore, is in the best position to verify the validity of line separation request documentation. USAC will also be able to act as a centralized repository for this information, minimizing the potential for data leakages compared to having this information reviewed by both USAC and a state administrator. As noted above, survivors will be able to leverage the database connections that the National Verifier uses to confirm program participation when seeking to confirm their financial hardship status. Finally, by requiring survivors to apply through the National Verifier, we ensure more consistent messaging to survivors and review standards for all documentation. To this end, we direct USAC to explore avenues for ensuring that application information and materials are made available to survivors in a variety of different formats and languages. In adopting this approach, we do not remove any of the existing channels by which consumers can be supported in their Lifeline application process.

169. In applying for emergency communications support through the National Verifier, we believe that the current amount of personal information collected for enrollment into the Lifeline program is generally appropriate. This information allows USAC to confirm that individuals are who they say they are—and by collecting the last four digits of an applicant's or subscriber's Social Security number or Tribal Identification number, that process can often be completed automatically. That automated confirmation often allows subscribers to provide less documentation than if they were required to confirm their identity through a manual review process. Some survivor advocates called for either omitting survivor identifiers or using alternative identifiers, and to avoid using Social Security numbers whenever possible. We find that requiring only the last four digits of an applicant's Social Security number will balance the legitimate interests in protecting the safety and security of survivors while also adequately verifying survivors' identities. Given the similar program integrity concerns and significant administrative challenges, we also decline to modify the information collected from survivors to permit alias names as EPIC suggests.

170. We understand, however, that current address information is extremely sensitive information for survivors escaping domestic violence or abuse. Unlike a survivor's name or the

last four digits of their Social Security number, if address information is disclosed it could imminently allow an abuser to locate a survivor, and because of this risk, survivors may not reside at one location or have a fixed address. A survivor also may be hesitant to seek emergency communications support if they believe doing so could risk disclosing their location to an abuser. In light of these unique risks, we will allow survivors to submit prior address information from within the last six months on their Lifeline applications, thereby giving survivors the opportunity to shield their current address information and to confirm their identity automatically. By requiring a survivor's name, the last four digits of their Social Security Number, and a relatively recent address, we may have enough information to allow USAC to automatically confirm the survivor's identity without further information. At the same time, by allowing survivors to submit prior address information where possible, we acknowledge and accommodate the critical privacy and safety concern of survivors and survivor advocacy organizations in protecting the current location information of survivors. However, if it is not possible to confirm the survivor's identity in this manner, then the survivor will need to submit their documentation manually and should rely on their current address in such instances.

171. Having current address information better allows USAC to conduct consumer outreach and prevent against duplicate household enrollment, but we believe that affording flexibility to apply with prior address information is appropriate for survivors. We confirm, however, that USAC should not modify its practices for protecting the program against enrolling duplicate households. In instances where the survivor's submitted address indicates a potential duplicate enrollment, that survivor will need to complete the Lifeline program's Household Worksheet. This approach should allow for authentication of a survivor's identity, while also speaking to concerns of commenters related to protecting program integrity. Finally, during the emergency communications support period, enrolled survivors will not be required to comply with the current requirement in the Lifeline program's rules that subscribers must update their address within 30 days of moving.

172. In the *Safe Connections NPRM,* we sought comment on how we might collect information from survivors when they are applying or enrolling in the designated program. It does not appear that the Commission's forms and other documents require significant changes to account for survivors, and we did not receive any specific feedback from commenters suggesting changes to the forms. However, we do believe that there will need to be some minor refinements to account for survivors' entry into the emergency communications support program. To that end, we direct the Bureau and USAC, in coordination with the Office of General Counsel, as necessary, to consider and adopt appropriate revisions to the relevant forms. We expect that the Bureau and USAC will work to update the forms to request confirmation of a survivor's line separation request, consistent with the documentation that service providers will give to survivors. We also expect similar updates regarding the submission of material to demonstrate financial hardship. Finally, we direct the Bureau and USAC to include in appropriate program forms information soliciting communications preferences, so that survivors can make clear how USAC should contact them in the future. This may be particularly helpful for survivors who do not wish to receive mail at their address. Survivors should be given options for such outreach such as physical mail, email, text messaging, and Interactive Voice Response (IVR).

173. We also do not believe that any significant changes need to be made to the enrollment process and the information that is provided to survivors to share with their service provider for enrolling in the program or the information that is shared between USAC's systems and service providers through any API connections that might exist. We direct USAC to make the necessary system changes to flag survivor entries in its systems so that service providers are aware of a survivor's status and treat such information with heightened sensitivity. While we decline to prescribe specifics at this time, we also direct the Bureau and USAC to implement enhancements as they deem appropriate to protect survivor information that is shared with service providers. We strongly encourage service providers to take steps similar to those taken in this document around address submission in their systems, and we remind service providers of their obligations under the confidentiality rules we adopt in this document, as well as section 222 of the Communications Act and the Commission's Customer Proprietary Network Information (CPNI) rules when it comes to survivor privacy.

174. *General Program Requirements.* As proposed in the *Safe Connections NPRM,* the Lifeline program's general rules and requirements will remain largely in effect for survivors and service providers. Any areas where there might be confusion between the existing Lifeline program's general rules and the rules meant to implement the SCA have been specifically addressed in our amendments to the Lifeline program's rules. There were no commenters that addressed this concern specifically in the context of the designated program for emergency communications support. However, several commenters had more open-ended statements suggesting that the Commission should clearly articulate that rules meant to implement the SCA should supersede existing program rules. Because we amend our Lifeline program rules to incorporate our actions in this document taken pursuant to the SCA, we do not need to issue such a blanket statement to address provider concerns. Where we have not acted to specifically address the SCA changes adopted in this document, we expect that the Lifeline program's rules remain appropriate as applied to survivors seeking emergency communications support, and Lifeline providers should continue to comply with the program rules, including the amendments we make through this document.

175. Perhaps most significantly, we do not modify any of the Lifeline program's usage requirements for survivors receiving emergency communications support. We do not believe that the rationale for those requirements, namely ensuring that limited program resources go to individuals that truly need the service, is less compelling when applied to survivors. NaLA urges the Commission to eliminate the program's usage requirement and contends that survivors may value any communications access they receive as an ''emergency phone,'' which we interpret to mean a phone or device that may not be used by the survivor. As explained above, we do not believe that adopting such an understanding would result in the best usage of the limited financial resources available to the Lifeline program. We also decline to change the Lifeline program's limit of one benefit per household. While ''survivor'' is defined as inclusive of an individual caring for another individual against whom a covered act has been committed, we view such a situation as inclusive of our current definition of household. We did not receive significant comments expressing concerns with this portion of the Lifeline rules or identifying any potential challenges that survivors

might encounter were we to continue to adhere to the one per household limitation. Finally, we allow survivors to enter the Lifeline program while requiring that service providers adhere to the program's existing record retention and audit rules. We have not received any specific concerns indicating how tensions might arise from the need to adhere to these requirements while serving survivors.

4. Additional Program Concerns

176. In the *Safe Connections NPRM,* we raised a number of concerns dealing with how survivors can take advantage of the benefit and how low-income survivors might be transitioned to longer-term participation in the program after their emergency support runs its course. As proposed in the *Safe Connections NPRM,* we will permit survivors receiving emergency communications support to receive six monthly benefits from the Lifeline program and by extension the ACP in accordance with the SCA. While we expect that this support will largely be provided in a single six-month time frame, we do not believe it would be appropriate to limit survivors to such a requirement. As such, we direct USAC to implement processes and procedures for tracking the emergency communications support provided to survivors to ensure that they do not receive more than six months of emergency communications support tied to a single line separation, even if that support is not provided in a single six-month block of time. We also do not believe that we need to place any limitations on the ability of survivors to change their service, as available to any other Lifeline subscriber, during this time period. To ensure the smooth operation of this effort, we strongly encourage service providers to file claims for reimbursement for emergency communications support provided to survivors on a monthly basis. Service providers are permitted to submit claims for reimbursement for Lifeline service within one year, but in the context of emergency communications support, timely claim submission allows USAC to accurately track and apprise survivors and service providers of the status of the survivor's remaining available emergency communications support.

177. The SCA is silent on whether emergency communications support can be received more than once in a survivor's lifetime, but survivor advocates expressed support for allowing survivors to participate in the program beyond an initial six-month period if appropriate. To best support survivors, we allow a survivor to receive multiple periods of emergency communications support through the designated program if each period is paired with proof of completion of a new line separation process. With the SCA silent on this exact issue, we believe that the requirement that any further emergency support be paired with a new line separation request, as adopted here, is consistent with the statute and sufficiently supports survivors who need to leave abusive situations more than once in their lives while ensuring the benefits are not unjustifiably expanded beyond the six-month period prescribed by the SCA. We believe that this approach reflects the realities of survivors' situations while also ensuring the protection of the designated program and adhering to the requirements of the SCA. Any process established by USAC to ensure survivors' compliance with the six-month period of support should account for situations where a survivor may need to re-enter the designated program for a new emergency support period tied to a new line separation request and demonstration of financial hardship, in accordance with the rules adopted in this document.

178. The SCA specifically contemplates that survivors may wish to continue to receive support from the designated program beyond their initial support period if they can qualify for the underlying program. Because USAC will process initial applications and enrollments into the emergency support program, we believe that USAC will be well-positioned to handle this transition for survivors eligible to continue to receive Lifeline and/or ACP benefits after their emergency communications support period has finished. We therefore adopt a process to allow survivors who wish to continue in the program to demonstrate their eligibility to do so. We note that survivors going through this process must meet the standard eligibility requirements for participation in Lifeline and/or the ACP.

179. To support longer-term low-income survivor enrollment and to ease customer transition efforts, we direct USAC to notify a survivor receiving emergency communications support approximately 75 days before the period of emergency support is meant to expire. Prior to this notification, USAC will attempt to verify the survivor's eligibility through its automated eligibility database check process. If the survivor's eligibility can be automatically confirmed through this process, USAC's outreach to the survivor will notify them that they are eligible to continue receiving the Lifeline benefit and will continue to do so with their current provider unless they de-enroll or transfer their benefit to a different Lifeline provider. If USAC cannot confirm a survivor's eligibility through its automated database checks, then USAC will notify the survivor that they can continue to participate in the program if they meet the Lifeline program's eligibility requirements and submit documentation to confirm their eligibility to participate. USAC will notify the survivor of this change in status through written communication, either through email, written letter, text messaging, or other automated process as appropriate. Where possible, this outreach should also align with a survivor's expressed contact preferences. USAC's communication will also make the survivor aware of any changes in their benefit amount that might result from the transition from emergency communications support, in which a survivor may receive the full base Lifeline support for a voice-only plan, to the standard Lifeline support amounts for voice-only service. Any potential change to the voice-only support from the survivor option of $9.25 to the standard Lifeline reimbursement amount of $5.25 should be communicated to survivors so they are aware of the change and can pursue an alternative plan if so desired. For survivors who take advantage of their Lifeline participation to enroll in the ACP, this outreach will also provide information on qualifying for ACP longer-term, and the general differences between the programs in eligibility requirements and features.

180. In responding to this outreach for continued support, survivors must confirm their eligibility in accordance with the existing requirements for entry into the Lifeline program—that is, a self-certification of financial hardship will not be sufficient to confirm long-term eligibility to participate in Lifeline. USAC largely follows the documentation requirements applied by our rules to service providers when assessing documentation used for enrollment and recertification in the Lifeline program. This approach is consistent with the SCA. Throughout this process, service providers may contact survivors as they might through the regular continued eligibility or recertification process, in addition to USAC-led outreach. Similarly, survivors that rely on their enrollment in Lifeline through the emergency communications support process to qualify for ACP will also be required to demonstrate that they are eligible to remain in ACP. We encourage such outreach to be

respectful of survivors' communications preferences and the sensitive nature of their personal information. Finally, consistent with our standard processes, survivors who are unable to confirm their eligibility to continue to participate in the Lifeline program should have their de-enrollment from the Lifeline program processed by USAC within five business days of the end of their six-month period of emergency participation. This de-enrollment requirement also applies where a survivor used their Lifeline enrollment through emergency communications support processes to qualify for and enroll in the ACP.

181. *Privacy Concerns.* Under the Privacy Act of 1974, the Federal Information Security Modernization Act of 2014 (FISMA), and applicable guidance, the Commission and USAC have strong privacy protections in place for the information collected in the administration of the Commission's programs. However, we believe that handling survivor data may present some unique challenges. As such, we direct the Bureau to work with USAC, in coordination with the Office of Managing Director (OMD) (and specifically Office of Chief Information Officer (OCIO)) and the Commission's Senior Agency Official for Privacy, to consider ways in which USAC might further limit access to data tied to survivors. The Bureau and USAC should consider, for the USAC-run call center, requiring call center supervisor review before the release of any survivor personal information from a USAC (or its contractor's) call center, developing and delivering specific training on handling survivor data for all support center staff, and limiting the type of survivor data shared with service providers outside of more routine system interactions. With oversight from the Bureau, USAC should implement responsive changes that cause minimal burdens on consumers and service providers.

182. The systems that USAC uses to manage the Lifeline program and the ACP collect only data elements that have been prescribed by the Commission to allow for the effective management of the programs and to protect program integrity. We direct USAC to pay particular attention to whether inclusion of survivor enrollments in USAC reports could reveal sensitive information about enrollees. For example, if a survivor is the only enrollee, or one of a few enrollees, in a geographic region for which there is a report, then a savvy analyst, perhaps with local knowledge, might be able to deduce the survivor's identity. In cases in which inclusion of survivor enrollments could reveal sensitive information, USAC should utilize privacy enhancing technologies or methodologies (*e.g.,* excluding data, masking data, or employing differential privacy) to avoid doing so. We also direct service providers to protect the privacy of both the survivor and the alleged abuser consistent with the standards we adopt above regarding covered provider obligations for handling survivor information.

183. *Program Evaluation.* The SCA requires the Commission to complete a program evaluation within two years of the Commission completing its rulemaking. The evaluation is meant to examine the impact and effectiveness of the support offered to survivors suffering from financial hardship and to assess the detection and reduction of risks to program integrity with respect to the support offered. To this end, the Commission directs USAC, under the oversight of the Bureau and either directly or with the support of a vendor, to complete an evaluation of the effectiveness of the support offered to survivors. This evaluation should be completed and approved by the Bureau no later than two years after this document is published in the **Federal Register**, and the Commission will share the completed evaluation with the appropriate congressional committees. To develop this evaluation, USAC, operating under the guidance of the Bureau and the Office of Economics and Analytics, with coordination from the Senior Agency Official for Privacy, should develop surveys that can be sent to stakeholder groups that work directly with survivors, inclusive of service providers, for program evaluation input. These surveys should be ready to be shared with relevant stakeholder groups no later than sixteen months after the adoption of this document, a time frame we believe will properly accommodate the necessary Paperwork Reduction Act and Privacy Act timelines that may accompany such outreach. By working with stakeholder groups we avoid going directly to survivors, who may have privacy and safety concerns. Information developed through the survey process can be supplemented by any data that USAC is able to develop through its general maintenance of survivor data in USAC's systems. In response to the *Safe Connections NPRM,* no commenter provided significant feedback regarding program evaluations.

## II. Procedural Matters

184. *Paperwork Reduction Act Analysis.* This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. All such requirements will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

185. In this document, we adopt rules, pursuant to Congress's direction in the SCA, that have an impact on all covered providers, including covered providers that are small entities. We impose certain obligations regarding communications with consumers and survivors. We also establish a compliance date six months after the effective date of this document, finding that the countervailing public interest in ensuring survivors have access to line separations regardless of their provider outweighs an extended compliance deadline for small covered providers. Further, staggered compliance deadlines could cause confusion for consumers, and we believe that the SCA's operational and technical infeasibility provisions we codify in our rules will account for differences in the capabilities between large and small covered providers regarding information collection requirements. Regarding protecting the privacy of calls and texts to hotlines, we require covered providers and wireline providers of voice service, within 12 months, subject to certain conditions that may extend this time, (1) omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission; and (2) maintain internal records of calls and text messages excluded from consumer-facing logs of calls and text messages. Covered providers and wireline providers of voice service that are small service providers are given 18 months, subject to certain conditions that may extend this time, to comply with the same obligations. We received comments requesting that smaller providers be afforded 24 months to comply with such obligations. Recognizing that the SCA contains no language regarding specific timeframes with respect to this obligation, we found

that granting smaller providers extra implementation time is appropriate, given that they may face more resource challenges than larger providers in complying with the new rules. We acknowledged that this 18-month period is less than the requested 24-month period, but we found that our 18-month compliance deadline for small providers properly balances the significance of the risks faced by domestic abuse survivors, and the benefits of them being able to call hotlines and seek help without fear of the abuser accessing their call records, with the implementation challenges faced by smaller providers. Third, regarding emergency communications support for survivors, we designate the Lifeline program as the program that will support emergency communications efforts for survivors with financial hardship. This will have an impact on eligible telecommunications carriers designated to provide Lifeline support, but we expect any new regulatory impacts to be minor and consistent with our existing rules. As the SCA has no definition for financial hardship we adopt a definition that is more expansive than the current Lifeline eligibility standards, and we adopt an approach for documenting that financial hardship that allows for self-certification. We also direct USAC to prepare for a program evaluation of our efforts to provide emergency communications support to survivors. This evaluation will require surveys of relevant stakeholder groups that USAC will develop under the oversight of the Bureau and the Office of Economics and Analytics.

186. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the potential impact of the rule and policy changes adopted in the *Report and Order* on small entities. The FRFA is set forth in section III of this document.

187. *Congressional Review Act.* The Commission will send a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

## III. Final Regulatory Flexibility Analysis

188. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Safe Connections NPRM,* released in February 2023. The Commission sought written public comment on the proposals in the *Safe Connections NPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

### *A. Need for and Objectives of the Report and Order*

189. Congress enacted the Safe Connections Act of 2022 (Safe Connections Act or SCA) in November of 2022 to ensure survivors of domestic violence can separate from abusers without losing independent access to their mobile service plan. The SCA amends the Communications Act of 1934 (Communications Act) to require mobile service providers to separate the line of a survivor of domestic violence (and other related crimes and abuse), and any individuals in the care of the survivor, from a mobile service contract shared with an abuser within two business days after receiving a request from the survivor. The SCA also directs the Commission to issue rules, within 18 months of the statute's enactment, implementing the line separation requirement. Additionally, the SCA requires the Commission to designate either the Lifeline program or Affordable Connectivity Program (ACP) as the vehicle for providing survivors suffering financial hardship with emergency communications support for up to six months. Further, the legislation requires the Commission to open a rulemaking within 180 days of enactment to consider whether to, and how the Commission should, establish a central database of domestic abuse hotlines to be used by service providers and require such providers to omit, subject to certain conditions, any records of calls or text messages to the hotlines from consumer-facing call and text message logs.

190. The *Report and Order* implements the SCA, adopting measures we believe will aid survivors who lack meaningful support and communications options when establishing independence from an abuser. We take action to ensure that survivors of domestic violence are able to maintain critical access to reliable, safe, and affordable connectivity. Such connectivity permits survivors to contact family and friends, and seek help through services such as domestic abuse hotlines. Survivors whose devices and associated telephone numbers are part of multi-line or shared plans with abusers can face difficulties separating lines from such plans and maintaining affordable service. Survivors may be reluctant to call support services such as hotlines for fear of the call log exposing the call to an abuser. Survivors may also experience financial hardship as a result of leaving a relationship with an abuser.

191. Specifically, the *Report and Order* adopts rules to implement the line separation requirement in the Safe Connections Act; adopts the Commission's proposal from the *Safe Connections NPRM* relating to protecting the privacy of calls and text messages to domestic abuse hotlines to establish a central database of domestic abuse hotlines to be used by service providers and require such providers to omit, subject to certain conditions, any records of calls or text messages to the hotlines from consumer-facing call and text message logs; and designates the Lifeline program as the vehicle for providing survivors suffering financial hardship with emergency communications support for up to six months.

### *B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

192. There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, we considered the potential impact of the rules proposed in the IRFA on small entities and took steps where appropriate and feasible to reduce the compliance burden for small entities in order to reduce the economic impact of the rules enacted herein on such entities.

### *C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*

193. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

### *D. Description and Estimate of the Number of Small Entities To Which the Rules Will Apply*

194. 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 rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as

the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

195. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

196. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

197. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

198. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

199. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

200. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

201. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

202. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were

engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

203. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 498,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator. Based on industry data, only six cable system operators have more than 498,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note, however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

204. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

205. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

206. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

207. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as ''[a] company that provides end-users with wireless access to the internet[.]'' Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees.

208. Additionally, according to Commission data on internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, we believe that the majority of wireless internet access service providers can be considered small entities.

209. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the

closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

210. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

211. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

*E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

212. In the *Report and Order,* the rules we adopt regarding the separation of lines from shared mobile service contracts require all small and other covered providers to take several actions with regard to reporting, recordkeeping, and other compliance matters.

213. Specifically, within two business days of receiving a completed line separation request from a survivor, a covered provider must separate the line(s) of a survivor (and any line(s) of an individual in the care of a survivor) or the line(s) of an abuser from a shared mobile service contract under which a survivor and abuser each use a line. To facilitate such line separations, a covered provider must establish more than one secure remote means through which a survivor may submit all information required to effectuate a line separation request and such means must be accessible by survivors with disabilities. A covered provider must treat any information submitted by a survivor in connection with a line separation request as confidential, which means the covered provider must securely dispose of such information within 90 days, subject to certain exceptions; implement policies and procedures governing the treatment and disposal of such information; train employees on such procedures; and restrict access to databases storing such information. Furthermore, at the time a survivor submits a line separation request, a covered provider must allow the survivor to indicate service choices, including from among any commercially available plans offered by the covered provider. Our rules also require that, as part of the line separation request mechanism, a covered provider inform a survivor of the availability of funding from the Lifeline program, and about the rules pertaining to participation in Lifeline.

214. After receiving a line separation request from a survivor, a covered provider must notify the survivor that the covered provider may contact the survivor or the survivor's designated representative to confirm the line separation or to inform them of the covered provider's inability to complete the line separation. When communicating with a survivor or a survivor's designated representative, a covered provider must allow the survivor or the designated representative to select the manner of communication. Furthermore, a covered provider must provide documentation confirming receipt of the survivor's legitimate line separation request that clearly identifies the survivor by name. A covered provider must attempt to authenticate that a survivor submitting a line separation request is in fact a user of the specific line identified by the survivor. A covered provider must also lock the account subject to a line separation to prevent all SIM changes, number ports, and line cancellations and effectuate a line separation for the completed request, subject to operational or technical infeasibility. If a line separation is operationally or technically infeasible, a covered provider must inform the survivor of the nature of the infeasibility and provide information about alternative options, such as establishing a new account for the survivor. A covered provider must notify the survivor of the date it will notify the primary account holder of the completed line separation if the survivor who submitted a complete line separation request is not also the primary account holder. In the event a survivor elects to separate an abuser's line, a covered provider must also

provide notice to the survivor of when it will notify the abuser of the separation. Additionally, if the covered provider rejects a line separation request for any reason other than operational or technical infeasibility, the covered provider must notify the survivor within two business days through the manner of communication selected by the survivor of the rejection. This notification must also explain the basis for rejection, describe how the survivor can correct any issues with the existing request or submit a new one, and, if applicable, provide the survivor with information about alternative options, including starting a new account.

215. The new rules also require a covered provider to effectuate a line separation request regardless of whether an account lock is activated on the account. To balance the need to protect survivors with the need to protect against fraud, our rules also require that covered providers make a record of any customer other than the survivor who requests that the covered provider stop or reverse a line separation because of fraud.

216. In addition to the procedural requirements mentioned above, we require that covered providers train employees who will interact with survivors on the sensitivities surrounding such interactions. We also require that covered providers notify consumers of the availability of line separations from shared mobile service contracts on its website, in physical stores, and in other forms of public-facing consumer communication. Our rules detail the specific information that must be included by covered providers and we require that this notice be in any language in which the covered provider currently advertises.

217. Our rules also implement the SCA's statutory requirements that covered providers take certain actions with regard to financial responsibilities and account billing following completed line separations. Specifically, unless otherwise ordered by a court, when survivors separate their lines and the lines of individuals in their care from a shared mobile service contract, a covered provider must ensure that the financial responsibilities, including monthly service costs, for the transferred numbers are assumed by the survivor beginning on the date on which the covered provider transfers the billing responsibilities for and use of the transferred numbers to those survivors. We also require covered providers to ensure that any previously accrued arrears on an account following a line separation stay with the person who was the primary account holder prior to the line separation.

218. The rules we adopt relating to protecting the privacy of calls and text messages to domestic abuse hotlines require all covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service to omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database that we establish. These service providers must maintain internal records of these omitted calls and text messages. In addition, these providers are responsible for downloading the initial database file and subsequent updates to the database file from the central database that we establish. Updates must be downloaded and implemented by covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service no later than 15 days after such updates are made available for download. In the *Report and Order,* we exempt from its rules pertaining to protecting the privacy of calls and text messages to domestic abuse hotlines service providers that do not create their own call logs but, instead, rely on their underlying facilities-based provider to create such call logs and clarifying that wholesale service providers incur such an obligation.

219. We delegate many of the details regarding establishing the central database of hotlines to the Wireline Competition Bureau (Bureau), but direct the Bureau not to fund creation and maintenance of the database through an assessment on service providers. The rules adopted in the *Report and Order* service providers serving the vast majority of Americans to comply with the rules 12 months after publication of the *Report and Order* in the **Federal Register**. Small service providers, defined as covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service that have 100,000 or fewer voice service subscriber lines (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the provider's affiliates), are provided additional time an additional six months to comply (18 months). We provide two important caveats to aid the ability of service providers to comply with these deadlines. First, the deadline for compliance will be no earlier than eight months after the Bureau has published the database download file specification (14 months for small service providers), which should be the final detail necessary for service providers to complete design of their systems. Second, the deadline will be no earlier than two months after the Bureau announces that the database administrator has made the initial database download file available for testing (eight months for small service providers). To the extent that the date of either announcement causes the deadline to be later than 12 months after **Federal Register** publication (18 months for small service providers), the Bureau should announce the new deadline for implementation based on the date of the announcement.

220. The *Report and Order* directs the Universal Service Administrative Company (USAC) to ensure that survivors experiencing financial hardship will be able to apply for and enroll in the Lifeline program. The *Report and Order* also directs USAC to implement processes to transition survivors from emergency communications support at the end of the six-month emergency support period mandated by the SCA. The actions taken in the *Report and Order* do not place any significant new requirements on service providers that are also eligible telecommunications carriers (ETC) participating in the Lifeline program, regardless of whether ETCs are large or small businesses. The Lifeline rules already applicable to ETCs remain largely the same. We therefore expect the actions we have taken in the *Report and Order* achieve the goals of the SCA without placing additional costs and burdens on covered providers; however, there is not sufficient information on the record to quantify the cost of compliance for small entities, or to determine whether it will be necessary for small entities to hire professionals to comply with the adopted requirements.

### *F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

221. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

222. With regard to line separations, the Safe Connections Act directs the

Commission to consider implementation timelines for small covered providers, and after examining the record, we declined to adopt a different implementation timeframe for small providers. First, while the record indicated that small covered providers may need additional time to comply with the Safe Connections Act and our rules as a whole, commenters failed to provide sufficient justification for why small covered providers would require additional time to implement the line separation provisions specifically. Second, given the critical and potentially lifesaving importance of independent communications for survivors escaping abusive circumstances, we think it self-evident that survivors who receive service from small covered providers are no less entitled to the protections made available by the Safe Connections Act than survivors who receive service from other covered providers. Third, we found that adopting inconsistent timelines for small and large providers may make it difficult for stakeholders to carry out effective messaging campaigns touting the availability of line separations. This inconsistency may confuse survivors and ultimately dissuade them from further pursuing a line separation if they are told that their current carrier does not offer the ability despite having been informed of the Safe Connections Act's features by a stakeholder messaging campaign. Fourth, we believe that Congress included the technical and operational infeasibility provisions to account for differences in the capabilities of providers (among other reasons), particularly between large and small providers, and to incentivize and protect providers while they work to update or develop systems and processes capable of fully effectuating the SCA's requirements and our rules within the statutory timeframe. For these reasons, we declined to extend the implementation timeline for small entities.

223. With regard to our rules pertaining to protecting the privacy of calls and texts to hotlines, we received comments noting that smaller service providers work with limited staff and other resources, requiring it taking longer to implement changes in their systems, specifically requesting 24 months to comply with any obligations that the Commission might establish. As part of the directive under the Safe Connections Act to consider factors reflecting implementation of such requirements on smaller providers, we adopted a deadline of 18 months from the date of publication of the *Report and Order* in the **Federal Register** to comply with our new rules. We found that granting smaller providers extra implementation time is appropriate, given that they may face more resource challenges than larger providers (which are given 12 months) in complying with the new rules. We found that our 18-month compliance deadline for small providers properly balances the significance of the risks faced by domestic abuse survivors, and the benefits of them being able to call hotlines and seek help without fear of the abuser accessing their call records, with the implementation challenges faced by smaller providers. We also adjusted the guaranteed periods between the two important database creation milestones and the compliance deadline for smaller service providers to compensate for the additional six months that such providers are granted to comply. Our decision to exempt from the requirements service providers that do not create their own call logs but, instead, rely on their underlying facilities-based provider to create such call logs should be of significant benefit to smaller service providers that rely on resale rather than constructing capital-intensive networks to provide service.

224. We delegated many of the details regarding establishing the central database of hotlines to the Wireline Competition Bureau (Bureau), but direct the Bureau not to fund the creation and maintenance of the database through an assessment on service providers. In designating the Lifeline program to provide emergency communications support to survivors experiencing financial hardship, the *Report and Order* largely places requirements on USAC, as the Lifeline program administrator, to implement the mandated requirements. Service providers that are also ETCs are still required to ensure their compliance with all Lifeline rules, but this is not a new requirement. There are limited new requirements for ETCs, large and small, but these requirements align with existing requirements for participation in the Lifeline program and merely clarify that such requirements will also apply to survivors that might enter the Lifeline program. This approach allowed the Commission to minimize any significant impact on all participating entities.

*G. Report to Congress*

225. The Commission will send a copy of the *Report and Order,* including the FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

## IV. Ordering Clauses

226. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 4(i), 4(j), 201, 251, 254, 301, 303, 316, 332, 345, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 251, 254, 301, 303, 316, 332, 345, and 403, section 5(b) of the Safe Connections Act of 2022, Public Law 117–223, 136 Stat. 2280, and section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, as amended by the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, the *Report and Order* in WC Docket Nos. 22–238, 11–42, and 21–450 *is adopted* and that parts 54 and 64 of the Commission's Rules, 47 CFR parts 54, 64, are *amended* as set forth in the amendments at the end of this document.

227. *It is further ordered* that the *Report and Order shall be effective* January 14, 2024. Compliance with the rule changes adopted in the *Report and Order,* except for § 64.6408, shall not be required until the later of: (i) six months after the effective date of the *Report and Order;* or (ii) after the Office of Management and Budget (OMB) completes review of any information collection requirements associated with the *Report and Order* that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the compliance date for these rule changes by subsequent Public Notice and to cause part 54, §§ 54.403, 54.405, 54.409, 54.410, 54.424, and 54.1800, and part 64, § 64.2010 and subpart II, to be revised accordingly. Compliance with § 64.6408 shall be required as described in paragraphs 138–145 of the *Report and Order.* The Wireline Competition Bureau is delegated authority to extend the dates upon which compliance with the provisions of § 64.6408 shall be required, consistent with paragraphs 138–145 of the *Report and Order,* and to revise § 64.6408 accordingly.

228. *It is further ordered* that the Commission's Office of the Secretary, Reference Information Center, *shall send* a copy of the *Report and Order,* including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the

Chief Counsel for Advocacy of the Small Business Administration.

229. *It is further ordered* that the Office of the Managing Director, Performance Evaluation and Records Management, *shall send* a copy of the *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Parts 54 and 64**

Communications, Communications common carriers, Privacy, Telecommunications, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 64 as follows:

## PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Amend § 54.400 by adding paragraphs (q) through (s) to read as follows:

**§ 54.400 Terms and definitions.**

* * * * *

(q) *Survivor.* ''Survivor'' has the meaning given such term at 47 CFR 64.6400(m).

(r) *Emergency communications support.* ''Emergency communications support'' means support received through the Lifeline program by qualifying survivors pursuant to the Safe Connections Act of 2022, Public Law 117–223.

(s) *Financial hardship.* A survivor is suffering from ''financial hardship'' when the survivor's household satisfies the requirements detailed at § 54.409(a)(1) or (2) or is a household in which—

(1) The household's income as defined in paragraph (f) of this section is at or below 200% of the Federal Poverty Guidelines for a household of that size;

(2) At least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), or at least one member of the household is enrolled in a school or school district that participates in the Community Eligibility Provision (42 U.S.C. 1759a);

(3) At least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the participating provider verifies eligibility under § 54.1806(a)(2); and

(4) At least one member of the household receives assistance through the special supplemental nutritional program for women, infants and children established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786).

■ 3. Amend § 54.403 by adding paragraphs (a)(4) and (5) to read as follows:

**§ 54.403 Lifeline support amount.**

(a) * * *

(4) *Emergency communications support amount.* Emergency communications support in the amount of up to $9.25 per month will be made available to eligible telecommunications carriers providing service to qualifying survivors. An eligible telecommunications carrier must certify to the Administrator that it will pass through the full amount of support to the qualifying survivor and that it has received any non-Federal regulatory approvals necessary to implement the rate reduction.

(i) The base reimbursement in this paragraph (a)(4) can be applied to survivors receiving service that meets either the minimum service standard for voice service or broadband internet access service, as determined in accordance with § 54.408.

(ii) Additional Federal Lifeline support of up to $25 per month will be made available to an eligible telecommunications carrier providing emergency communications support to an eligible survivor resident of Tribal lands, as defined in § 54.400(e), to the extent that the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-Federal regulatory approvals necessary to implement the required rate reduction.

(5) *Compliance date.* Compliance with paragraph (a)(4) of this section will not be required until this paragraph (a)(5) is removed or contains a compliance date, which will not occur until the later of July 15, 2024; or after the Office of Management and Budget (OMB) completes review of any information collection requirements in paragraph (a)(4) that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for paragraph (a)(4) by subsequent Public Notice and notification in the **Federal Register** and to cause this section to be revised accordingly.

* * * * *

■ 4. Amend § 54.405 by adding paragraphs (e)(6) and (7) to read as follows:

**§ 54.405 Carrier obligation to offer Lifeline.**

* * * * *

(e) * * *

(6) *De-enrollment from emergency communications support.* Notwithstanding paragraph (e)(1) of this section, upon determination by the Administrator that a subscriber receiving emergency communications support has exhausted the subscriber's six months of support and has not qualified to participate in the Lifeline program as defined by § 54.409, the Administrator must de-enroll the subscriber from participation in the Lifeline program within five business days. An eligible telecommunications carrier shall not be eligible for Lifeline reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

(7) *Compliance date.* Compliance with paragraph (e)(6) of this section will not be required until this paragraph (e)(7) is removed or contains a compliance date, which will not occur until the later of July 15, 2024; or after OMB completes review of any information collection requirements in this subpart, §§ 54.403(a)(4), 54.410(d)(2)(ii), 54.410(i), and 54.424, that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for the requirements of paragraph (e)(6) by subsequent Public Notice and notification in the **Federal Register** and

to cause this section to be revised accordingly.

■ 5. Amend § 54.409 by adding paragraphs (a)(3) and (4) to read as follows:

**§ 54.409 Consumer qualification for Lifeline.**

(a) * * *

(3) Consumers that are survivors can qualify to receive emergency communications support from the Lifeline program without regard to whether the survivor meets the otherwise applicable eligibility requirements of the Lifeline program in this part, if:

(i) The survivor suffers from financial hardship as defined by § 54.400(s); and

(ii) The survivor requested a line separation as required under 47 U.S.C. 345(c)(1) of the Communications Act of 1934.

(4) Compliance with paragraph (a)(3) of this section will not be required until this paragraph (a)(4) is removed or contains a compliance date, which will not occur until the later of July 15, 2024; or after OMB completes review of any information collection requirements in this subpart, §§ 54.403(a)(4), 54.410(d)(2)(ii), 54.410(i), and 54.424, that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for the requirements of paragraph (a)(3) by subsequent Public Notice and notification in the **Federal Register** and to cause this section to be revised accordingly.

* * * * *

■ 6. Amend § 54.410 by revising paragraph (d)(2)(ii) and adding paragraphs (i) and (j) to read as follows:

**§ 54.410 Subscriber eligibility determination and certification.**

* * * * *

(d) * * *

(2) * * *

(ii) The subscriber's full residential address, or, for a subscriber seeking to receive emergency communications support from the Lifeline program, a prior billing or residential address from within the past six months;

* * * * *

(i) *Survivors of domestic violence.* All survivors seeking to receive emergency communications support from the Lifeline program must have their eligibility to participate in the program confirmed through the National Verifier. The National Verifier will also transition survivors approaching the end of their six-month emergency support period in a manner consistent with the requirements applied to eligible telecommunications carriers at paragraph (f) of this section, and the National Verifier will de-enroll survivors whose continued eligibility to participate in the Lifeline program cannot be confirmed, consistent with § 54.405(e)(6).

(j) *Compliance date.* Compliance with paragraph (d)(2)(ii) and paragraph (i) will not be required until this paragraph (j) is removed or contains a compliance date, which will not occur until the later of July 15, 2024; or after OMB completes review of any information collection requirements in paragraph (d)(2)(ii) and paragraph (i) that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for paragraph (d)(2)(ii) and paragraph (i) by subsequent Public Notice and notification in the **Federal Register** and to cause this section to be revised accordingly.

■ 7. Add § 54.424 to read as follows:

**§ 54.424 Emergency communications support for survivors.**

(a) *Confirmation of subscriber eligibility.* All eligible telecommunications carriers must implement policies and procedures for ensuring that subscribers receiving emergency communications support from the Lifeline program are eligible to receive such support. An eligible telecommunications carrier must not seek reimbursement for providing Lifeline service to a subscriber, based on that subscriber's eligibility to receive emergency communications support, unless the carrier has received from the National Verifier:

(1) Notice that the prospective subscriber meets the eligibility criteria set forth in § 54.409(a)(3).

(2) A copy of the subscriber's certification that complies with the requirements set forth in § 54.410(d).

(3) An eligible telecommunications carrier must securely retain all information and documentation provided by the National Verifier or received from the survivor to document their line separation request as required by § 54.417.

(b) *Emergency communications support duration.* Qualified survivors shall be eligible to receive emergency communications support for a total of no more than six months. The Administrator will inform eligible telecommunications carriers when participating survivors have reached their limit of allowable emergency communications support. A survivor may seek and receive further emergency communications support if that request is related to a new line separation request and a showing of financial hardship completed by the survivor and confirmed by the National Verifier.

(c) *Compliance date.* Compliance with paragraphs (a) and (b) of this section will not be required until this paragraph (c) is removed or contains a compliance date, which will not occur until the later of July 15, 2024; or after OMB completes review of any information collection requirements in paragraphs (a) and (b) that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for paragraphs (a) and (b) by subsequent Public Notice and notification in the **Federal Register** and to cause this section to be revised accordingly.

■ 8. Amend § 54.1800 by revising paragraph (j)(1) and adding paragraph (j)(7) to read as follows:

**§ 54.1800 Definitions.**

* * * * *

(j) * * *

(1) At least one member of the household meets the qualifications in § 54.409(a)(2) or (3) or (b);

* * * * *

(7) Compliance with paragraph (j)(1) of this section will not be required until this paragraph (j)(7) is removed or contains a compliance date, which will not occur until the later of July 15, 2024; or after OMB completes review of any information collection requirements in subpart E of this part, §§ 54.403(a)(4), 54.410(d)(2)(ii), 54.410(i), and 54.424, that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for the requirements of paragraph (j)(1) by subsequent Public Notice and notification in the **Federal Register** and to cause this section to be revised accordingly.

* * * * *

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 9. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 301, 303, 316, 345, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Div. P, sec. 503, Pub. L. 115–141, 132 Stat. 348, 1091; sec. 5, Pub. L. 117–223, 136 Stat 2280, 2285–88 (47 U.S.C. 345 note).

■ 10. Amend § 64.2010 by revising paragraph (f) and adding paragraph (h) to read as follows:

### § 64.2010 Safeguards on the disclosure of customer proprietary network information.

* * * * *

(f) *Notification of account changes.* (1) Telecommunications carriers must notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten password, online account, or address of record is created or changed. This notification is not required when the customer initiates service, including the selection of a password at service initiation. This notification may be through a carrier-originated voicemail or text message to the telephone number of record, or by mail to the address of record, and must not reveal the changed information or be sent to the new account information.

(2) Paragraph (f)(1) of this section does not apply to a change made in connection with a line separation request under 47 U.S.C. 345 and subpart II of this part.

* * * * *

(h) *Compliance date.* Compliance with the provision in paragraph (f) of this section applicable to line separation requests under 47 U.S.C. 345 and subpart II of this part will not be required until this paragraph (h) is removed or contains a compliance date, which will not occur until the later of July 15, 2024; or after OMB completes review of any information collection requirements in subpart II of this part that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for the requirements of paragraph (f) by subsequent Public Notice and notification in the **Federal Register** and to cause this section to be revised accordingly.

■ 11. Add subpart II, consisting of §§ 64.6400 through 64.6409, to read as follows:

## Subpart II—Communications Service Protections for Victims of Domestic Violence, Human Trafficking, and Related Crimes

Sec.



### § 64.6400 Definitions.

For purposes of this subpart:

(a) *Abuser. Abuser* means an individual who has committed or allegedly committed a covered act, as defined in 47 U.S.C. 345 and this subpart, against:

(1) An individual who seeks relief under 47 U.S.C. 345 and this subpart; or

(2) An individual in the care of an individual who seeks relief under 47 U.S.C. 345 and this subpart.

(b) *Business day. Business day* means the traditional work week of Monday through Friday, 8 a.m. to 5 p.m., excluding the covered provider's company-defined holidays.

(c) *Call. Call* means a voice service transmission, regardless of whether such transmission is completed.

(d) *Consumer-facing logs of calls and text messages. Consumer-facing logs of calls and text messages* means any means by which a covered provider, wireline provider of voice service, fixed wireless provider of voice service, or fixed satellite provider of voice service presents to a consumer a listing of telephone numbers to which calls or text messages were directed, regardless of, for example, the medium used (such as by paper, online listing, or electronic file), whether the call was completed or the text message was delivered, whether part of a bill or otherwise, and whether requested by the consumer or otherwise provided. The term includes oral and written disclosures by covered providers, wireline provider of voice service, fixed wireless provider of voice service, and fixed satellite provider wireline providers of voice service of individual call and text message records.

(e) *Covered act. Covered act* means conduct that constitutes:

(1) A crime described in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)), including, but not limited to, domestic violence, dating violence, sexual assault, stalking, and sex trafficking;

(2) An act or practice described in paragraph (11) or (12) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102) (relating to severe forms of trafficking in persons and sex trafficking, respectively); or

(3) An act under State law, Tribal law, or the Uniform Code of Military Justice that is similar to an offense described in paragraph (e)(1) or (2) of this section.

(4) A criminal conviction or any other determination of a court shall not be required for conduct described in this paragraph (e) to constitute a covered act.

(f) *Covered hotline. Covered hotline* means a hotline related to domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar act. Such term includes any telephone number on which more than a *de minimis* amount of counseling and/or information is provided on domestic violence, dating violence, sexual assault, stalking, sex trafficking, severe forms of trafficking in persons, or any other similar acts.

(g) *Covered provider. Covered provider* means a provider of a private mobile service or commercial mobile service, as those terms are defined in 47 U.S.C. 332(d).

(h) *Fixed wireless provider of voice service. Fixed wireless provider of voice service* means a provider of voice service to customers at fixed locations that connects such customers to its network primarily by terrestrial wireless transmission.

(i) *Fixed satellite provider of voice service. Fixed satellite provider of voice service* means a provider of voice service to customers at fixed locations that connects such customers to its network primarily by satellite transmission.

(j) *Primary account holder. Primary account holder* means an individual who is a party to a mobile service contract with a covered provider.

(k) *Shared mobile service contract. Shared mobile service contract* means a mobile service contract for an account that includes not less than two lines of service, and does not include enterprise services offered by a covered provider. For purposes of this subpart, a ''line of service'' shall mean one that is associated with a telephone number, and includes all of the services

associated with that line under the shared mobile service contract, regardless of classification, including voice, text, and data services.

(l) *Small service provider. Small service provider* means a covered provider, wireline provider of voice service, fixed wireless provider of voice service, or fixed satellite provider of voice service that has 100,000 or fewer voice service subscriber lines (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the provider's affiliates).

(m) *Survivor. Survivor* means an individual who is not less than 18 years old and:

(1) Against whom a covered act has been committed or allegedly committed; or

(2) Who cares for another individual against whom a covered act has been committed or allegedly committed (provided that the individual providing care did not commit or allegedly commit the covered act). For purposes of this subpart, an individual who ''cares for'' another individual, or individual ''in the care of'' another individual, shall encompass:

(i) Any individuals who are part of the same household, as defined in § 54.400 of this chapter;

(ii) Parents, guardians, and minor children even if the parents and children live at different addresses;

(iii) Those who care for, or are in the care of, another individual by valid court order or power of attorney; and

(iv) An individual who is the parent, guardian, or caretaker of a person over the age of 18 upon whom an individual is financially or physically dependent (and those persons financially or physically dependent on the parent, guardian or caretaker).

(n) *Text message. Text message* has the meaning given such term in section 227(e)(8) of the Communications Act of 1934, as amended (47 U.S.C. 227(e)(8)).

(o) *Voice service. Voice service* has the meaning given such term in section 4(a) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (47 U.S.C. 227b(a)).

(p) *Wireline provider of voice service. Wireline provider of voice service* means a provider of voice service that connects customers to its network primarily by wire.

**§ 64.6401 Line separation request submission requirements.**

(a) A survivor seeking to separate a line from a shared mobile service contract pursuant to 47 U.S.C. 345 and this subpart, or a designated representative of such survivor, shall submit to the covered provider a line separation request that:

(1) Requests relief under 47 U.S.C. 345 and this subpart;

(2) Identifies each line that should be separated, using the phone number associated with the line;

(3) Identifies which line(s) belong to the survivor and states that the survivor is the user of those lines;

(4) In the case of a survivor seeking separation of the line(s) of any individual in the care of a survivor, includes a signed and dated affidavit that states that the individual is in the care of the survivor and is the user of the specific line(s) to be separated;

(5) In the case of a survivor seeking separation of the abuser's line(s), states that the abuser is the user of that specific line;

(6) Includes the name of the survivor and the name of the abuser that is known to the survivor;

(7) Provides survivor's preferred contact information for communications regarding the line separation request;

(8) In the case of a designated representative assisting with or submitting the line separation request on behalf of a survivor, provides the name of that designated representative and the designated representative's relationship to the survivor, and states that the designated representative assisted the survivor;

(9) Includes evidence that verifies that an individual who uses a line under the shared mobile contract has committed or allegedly committed a covered act against the survivor or an individual in the survivor's care. Such evidence shall be either:

(i) A copy of a signed affidavit from a licensed medical or mental health care provider, licensed military medical or mental health care provider, licensed social worker, victim services provider, or licensed military victim services provider, or an employee of a court, acting within the scope of that person's employment; or

(ii) A copy of a police report, statements provided by police, including military or Tribal police, to magistrates or judges, charging documents, protective or restraining orders, military protective orders, or any other official record that documents the covered act.

(b) A covered provider may attempt to assess the authenticity of the evidence of survivor status submitted pursuant to paragraph (a)(9) of this section, and may deny a line separation request if the covered provider forms a reasonable belief of fraud from such an assessment, but in any case shall not directly contact entities that created any such evidence to confirm its authenticity.

(c) A covered provider shall not assess the veracity of the evidence of survivor status submitted pursuant to paragraph (a)(9) of this section.

(d) Notwithstanding 47 U.S.C. 222(c)(2), and except as provided in paragraphs (d)(1) through (3) of this section, a covered provider; any officer, director, or employee of a covered provider; and any vendor, agent, or contractor of a covered provider that receives or processes line separation requests with the survivor's consent or as needed to effectuate the request, shall treat the fact of the line separation request and any information or documents a survivor submits under this subpart, including any customer proprietary network information, as confidential and securely dispose of the information not later than 90 days after receiving the information, except as provided in paragraphs (d)(2) and (3) of this section.

(1) A covered provider may only disclose or permit access to information a survivor submits under this subpart pursuant to a valid court order; to the individual survivor submitting the line separation request; to anyone that the survivor specifically designates; to those third parties necessary to effectuate the request (*i.e.,* vendors, contractors, and agents); or, to the extent necessary, to the Commission or the Universal Service Administrative Company for processing of emergency communications support through the Lifeline program for qualifying survivors, as provided in § 54.424 of this chapter.

(2) A covered provider may retain any confidential record related to the line separation request for longer than 90 days upon receipt of a legitimate law enforcement request.

(3) A covered provider may maintain a record that verifies that a survivor fulfilled the conditions of a line separation request under this subpart for longer than 90 days after receiving the information as long as the covered provider also treats such records as confidential and securely disposes of them. This record shall not contain the documentation of survivor status described in paragraph (a)(9) of this section or other original records a survivor submits with a request under this subpart.

(4) A covered provider shall implement data security measures commensurate with the sensitivity of the information submitted with line separation requests, including policies and procedures governing confidential treatment and secure disposal of the

information a survivor submits under this subpart, train employees on those policies and procedures, and restrict access to databases storing such information to only those employees who need access to that information.

(5) A covered provider shall not use, process, or disclose the fact of a line separation request or any information or documentation provided with such a request to market any products or services.

(e) Nothing in this section shall affect any law or regulation of a State providing communications protections for survivors (or any similar category of individuals) that has less stringent requirements for providing evidence of a covered act (or any similar category of conduct) than this section.

**§ 64.6402 Processing of separation of lines from a shared mobile service contract.**

(a) Subject to the requirements of this section, as soon as feasible, but not later than close of business two businesses days after receiving a completed line separation request from a survivor submitted pursuant to § 64.6401, a covered provider shall, consistent with the survivor's request:

(1) Separate the line(s) of the survivor, and the line(s) of any individual in the care of the survivor, from the shared mobile service contract; or

(2) Separate the line(s) of the abuser from the shared mobile service contract.

(b) A covered provider shall attempt to authenticate, using multiple authentication methods if necessary, that a survivor requesting a line separation is a user of the specific line(s).

(1) If the survivor is the primary account holder or a user designated to have account authority by the primary account holder, a covered provider shall attempt to authenticate the identity of the survivor in accordance with the covered provider's authentication measures for primary account holders or designated users.

(2) If the survivor is not the primary account holder or a designated user, the covered provider shall attempt to authenticate the identity of the survivor using methods that are reasonably designed to confirm the survivor is actually a user of the specified line(s) on the account.

(c) At the time a survivor submits a line separation request, a covered provider shall:

(1) Inform the survivor, through remote means established in § 64.6403, that the provider may contact the survivor (or the survivor's designated representative) to confirm the line separation or inform the survivor if the provider is unable to complete the line separation;

(2) Inform the survivor of the existence of the Lifeline program as a source of support for emergency communications for qualifying survivors, as provided in § 54.424 of this chapter, including a description of who might qualify for the Lifeline program, how to participate, and information about the Affordable Connectivity Program, or other successor program, for which the survivor may be eligible due to their survivor status;

(3) If the line separation request was submitted through remote means, allow the survivor to elect the manner in which the covered provider may contact the survivor (or designated representative of the survivor) in response to the request, if necessary, which must include at least one means of communications that does not require a survivor to interact in person with an employee of the covered provider at a physical location;

(4) If the line separation request was submitted through remote means, allow a survivor to select a preferred language for future communications from among those in which the covered provider advertises, and deliver any such future communications in the language selected by the survivor; and

(5) Allow a survivor submitting a line separation request to indicate the service plan the survivor chooses from among all commercially available plans the covered provider offers for which the survivor may be eligible, including any prepaid plans; whether the survivor intends to retain possession of any device associated with a separated line; and whether the survivor intends to apply for emergency communications support through the Lifeline program, as provided in § 54.424 of this chapter, if available through the covered provider.

(d) If a covered provider cannot operationally or technically effectuate a line separation request after taking reasonable steps to do so, the covered provider shall, at the time of the request (or for a request made using remote means, not later than two business days after receiving the request) notify the survivor (or designated representative of the survivor) of that infeasibility. The covered provider shall explain the nature of the operational or technical limitations that prevent the provider from completing the line separation as requested and provide the survivor with information about available alternative options to obtain a line separation and alternatives to submitting a line separation request, including starting a new account for the survivor. The covered provider shall deliver any such notification through the manner of communication and in the language selected by the survivor at the time of the request.

(e) If a covered provider rejects a line separation request for any reason other than operational or technical infeasibility, the covered provider shall, not later than two business days after receiving the request, notify the survivor (or designated representative of the survivor), through the manner of communication and the language selected by the survivor at the time of the request, of the rejection. The covered provider shall explain the basis for the rejection, describe how the survivor can either correct any issues with the existing line separation request or submit a new line separation request, and, if applicable, provide the survivor with information about available alternative options to obtain a line separation and alternatives to submitting a line separation request, including starting a new account for the survivor.

(f) A covered provider shall treat any correction, resubmission, or alternatives selected by a survivor following a denial as a new request.

(g) As soon as feasible after receiving a legitimate line separation request, a covered provider shall notify a survivor of the date on which the covered provider intends to give any formal notification of a line separation, cancellation, or suspension of service:

(1) To the primary account holder, if the survivor is not the primary account holder; and

(2) To the abuser, if the line separation involves the abuser's line.

(h) A covered provider shall not notify an abuser who is not the primary account holder when the covered provider separates the line(s) of a survivor or an individual in the care of a survivor from a shared mobile service contract.

(i) A covered provider shall not notify a primary account holder of a request by a survivor to port-out a number that is the subject of a line separation request. A covered provider shall not notify a primary account holder of a survivor's request for a Subscriber Identity Module (SIM) change when made in connection with a line separation request pursuant to 47 U.S.C. 345 and this subpart.

(j) A covered provider shall only communicate with a survivor as required by this subpart or as necessary to effectuate a line separation. A covered provider shall not engage in marketing and advertising communications that are not related to assisting the survivor with

understanding and selecting service options.

(k) As soon as feasible after receiving a legitimate line separation request from a survivor, a covered provider shall lock the account affected by the line separation request to prevent all SIM changes, number ports, and line cancellations other than those requested as part of the line separation request pursuant to 47 U.S.C. 345 and this subpart until the request is processed or denied.

(l) A covered provider shall effectuate a legitimate line separation request submitted pursuant to this subpart, and any associated number port and SIM change requests, regardless of whether an account lock is activated on the account.

(m) A covered provider receiving a request from any customer other than the survivor requesting that the covered provider stop or reverse a line separation on the basis that the line separation request was fraudulent shall make a record of the request in the customer's existing account and, if applicable, the customer's new account, in the event further evidence shows that the line separation request was in fact fraudulent.

(n)(1) A covered provider shall provide a survivor with documentation that clearly identifies the survivor and shows that the survivor has submitted a legitimate line separation request under 47 U.S.C. 345(c)(1) and this subpart upon completion of the provider's line separation request review process. The documentation shall include:

(i) The survivor's full name;

(ii) Confirmation that the covered provider authenticated the survivor as a user of the line(s) subject to the line separation request; and

(ii) A statement that the survivor has submitted a legitimate line separation request under 47 U.S.C. 345(c)(1).

(2) The covered provider shall provide the documentation in paragraph (n)(1) to survivors in a written format that can be easily saved and shared by a survivor.

**§ 64.6403 Establishment of mechanisms for submission of line separation requests.**

(a) A covered provider shall offer a survivor the ability to submit a line separation request through secure remote means that are easily navigable, provided that remote options are commercially available and technically feasible. A covered provider shall offer more than one remote means of submitting a line separation request and shall offer alternative means to accommodate individuals with different disabilities. A covered provider may offer means of submitting a line separation request that are not remote if the provider does not require a survivor to use such non-remote means or make it more difficult for survivors to access remote means than to access non-remote means. For purposes of this subpart, remote means are those that do not require a survivor to interact in person with an employee of the covered provider at a physical location.

(b) The means a covered provider offers pursuant to this section must allow survivors to submit any information and documentation required by 47 U.S.C. 345 and this subpart. A covered provider may offer means that allow or require survivors to initiate a request using one method and submit documentation using another method. A covered provider shall permit a survivor to submit any documentation required by 47 U.S.C. 345 and this subpart in any common format.

(c) Any means that a covered provider offers pursuant to this section shall:

(1) Use wording that is simple, clear, and concise;

(2) Present the information requests in a format that is easy to comprehend and use;

(3) Generally use the same wording and format on all platforms available for submitting a request;

(4) Clearly identify the information and documentation that a survivor must include with a line separation request and allow survivors to provide that information and documentation easily;

(5) Be available in all the languages in which the covered provider advertises its services; and

(6) Be accessible by individuals with disabilities, including being available in all formats (*e.g.,* large print, braille) in which the covered provider makes its service information available to individuals with disabilities.

**§ 64.6404 Prohibitions and limitations for line separation requests.**

(a) A covered provider may not make separation of a line from a shared mobile service contract under this subpart contingent on any limitation or requirement other than those described in § 64.6405, including, but not limited to:

(1) Payment of a fee, penalty, or other charge;

(2) Maintaining contractual or billing responsibility of a separated line with the provider;

(3) Approval of separation by the primary account holder, if the primary account holder is not the survivor;

(4) A prohibition or limitation, including payment of a fee, penalty, or other charge, on number portability, provided such portability is technically feasible;

(5) A prohibition or limitation, including payment of a fee, penalty, or other charge, on a request to change phone numbers;

(6) A prohibition or limitation on the separation of lines as a result of arrears accrued by the account;

(7) An increase in the rate charged for the mobile service plan of the primary account holder with respect to service on any remaining line or lines;

(8) The results of a credit check or other proof of a party's ability to pay; or

(9) Any other requirement or limitation not specifically permitted by the Safe Connections Act of 2022, Public Law 117–223, 47 U.S.C. 345.

(b) Nothing in paragraph (a) of this section shall be construed to require a covered provider to provide a rate plan for the primary account holder that is not otherwise commercially available or to prohibit a covered provider from requiring a survivor requesting a line separation to comply with the general terms and conditions associated with using the covered provider's services, as long as those terms and conditions do not contain the enumerated prohibitions in 47 U.S.C. 345(b)(2) and this section, and do not otherwise hinder a survivor from obtaining a line separation.

**§ 64.6405 Financial responsibility following line separations.**

(a) Beginning on the date on which a covered provider transfers billing responsibilities for and use of telephone number(s) to a survivor following a line separation under § 64.6402(a), the survivor shall assume financial responsibility, including for monthly service costs, for the transferred telephone number(s), unless ordered otherwise by a court. Upon the transfer of the telephone number(s) under § 64.6402(a) to separate the line(s) of the abuser from a shared mobile service contract, the survivor shall have no further financial responsibilities to the transferring covered provider for the services provided by the transferring covered provider for the telephone number(s) or for any mobile device associated with the abuser's telephone number(s).

(b) Beginning on the date on which a covered provider transfers billing responsibilities for and rights to telephone number(s) to a survivor following a line separation under § 64.6402(a), the survivor shall not assume financial responsibility for any mobile device(s) associated with the separated line(s), unless the survivor purchased the mobile device(s), or

affirmatively elects to maintain possession of the mobile device(s), unless otherwise ordered by a court.

(c) Following a line separation under § 64.6402(a), a covered provider shall maintain any arrears previously accrued on the account with the subscriber who was the primary account holder prior to the line separation.

**§ 64.6406 Notice of line separation availability to consumers.**

(a) A covered provider shall make information about the line separation options and processes described in this subpart readily available to consumers:

(1) On a support-related page of the website and mobile application of the provider in all languages in which the provider advertises on the website;

(2) On physical stores via flyers, signage, or other handouts that are clearly visible and accessible to consumers, in all languages in which the provider advertises in that particular store and on its website;

(3) In a manner that is accessible to individuals with disabilities, including all formats (*e.g.,* large print, braille) in which a covered provider makes its service information available to individuals with disabilities; and

(4) In other forms of public-facing consumer communication.

(b) In providing the information in paragraph (a) of this section to consumers, a covered provider shall include, at a minimum, an overview of the line separation process; a description of survivors' service options that may be available to them; a statement that the Safe Connections Act does not permit covered providers to make a line separation conditional upon the imposition of penalties, fees, or other requirements or limitations; basic information concerning the availability of the Lifeline support for qualifying survivors; and a description of which types of line separations the provider cannot perform in all instances due to operational or technical limitations, if any.

**§ 64.6407 Employee training.**

A covered provider must train its employees who may interact with survivors regarding a line separation request on how to assist them or on how to direct them to other employees who have received such training.

**§ 64.6408 Protection of the privacy of calls and text messages to covered hotlines.**

(a) All covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service shall:

(1) Omit from consumer-facing logs of calls and text messages any records of calls or text messages to covered hotlines in the central database established by the Commission.

(2) Maintain internal records of calls and text messages omitted from consumer-facing logs of calls and text messages pursuant to paragraph (a)(1) of this section.

(3) Be responsible for downloading the initial database file and subsequent updates to the database file from the central database established by the Commission. Updates must be downloaded and implemented by covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service no later than 15 days after such updates are made available for download.

(b) With respect to covered providers, wireline providers of voice service, fixed wireless providers of voice service, and fixed satellite providers of voice service that are not small service providers, compliance with paragraph (a) of this section shall be required December 5, 2024. In the event the Wireline Competition Bureau has not released the database download file specification by April 5, 2024, or in the event the Wireline Competition Bureau has not announced that the database administrator has made the initial database download file available for testing by October 7, 2024, the compliance deadline set forth in this paragraph (b) shall be extended consistent with the delay, and the Wireline Competition Bureau is delegated authority to revise this section accordingly.

(c) With respect to small service providers that are covered providers or wireline providers of voice service, compliance with paragraph (a) of this section shall be required June 5, 2025. In the event the Wireline Competition Bureau has not released the database download file specification by October 7, 2024, or in the event the Wireline Competition Bureau has not announced that the database administrator has made the initial database download file available for testing by April 7, 2025, the compliance deadline set forth in this paragraph (c) shall be extended consistent with the delay, and the Wireline Competition Bureau is delegated authority to revise this section accordingly.

**§ 64.6409 Compliance date.**

Compliance with §§ 64.6400 through 64.6407 will not be required until this section is removed or contains a compliance date, which will not occur until the later of July 15, 2024; or after the Office of Management and Budget completes review of any information collection requirements in §§ 64.6400 through 64.6407 that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act or the Wireline Competition Bureau determines that such review is not required. The Commission directs the Wireline Competition Bureau to announce a compliance date for §§ 64.6400 through 64.6407 by subsequent Public Notice and notification in the **Federal Register** and to cause this subpart to be revised accordingly.

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Part III

## Securities and Exchange Commission

17 CFR Part 240
Clearing Agency Governance and Conflicts of Interest; Final Rule

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

**[Release No. 34–98959; File No. S7–21–22]**

**RIN 3235–0695**

## Clearing Agency Governance and Conflicts of Interest

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is adopting rules under the Securities Exchange Act of 1934 (''Exchange Act'') to improve the governance of clearing agencies registered with the Commission (''registered clearing agencies'') by reducing the likelihood that conflicts of interest may influence the board of directors or equivalent governing body (''board'') of a registered clearing agency. The rules identify certain responsibilities of the board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency. In support of these objectives, the rules establish new requirements for board and committee composition, independent directors, management of conflicts of interest, and board oversight.

**DATES:**

*Effective date*: February 5, 2024.

*Compliance date:* The applicable compliance dates are discussed in Part III of this release.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lee, Assistant Director, Stephanie Park, Senior Special Counsel, Claire Noakes, Special Counsel, Jenny Ogasawara, Branch Chief, and Haley Holliday, Attorney-Adviser, at (202) 551–5710, Office of Clearance and Settlement, Division of Trading and Markets; Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

**SUPPLEMENTARY INFORMATION:** The Commission is adopting 17 CFR 240.17ad–25 (''Rule 17Ad–25'') under the Exchange Act to establish new requirements for the board governance of registered clearing agencies and for the management of conflicts of interest by registered clearing agencies.[1] Below is a table of citations to the rules being adopted in this release:

| Commission reference | CFR citation (17 CFR) |
|---|---|
| Securities Exchange Act of 1934 (''Exchange Act''): | |
| Rule 17Ad–25 | § 240.17ad–25. |
| Rule 17Ad–25(a) | § 240.17ad–25(a). |
| Rule 17Ad–25(b) | § 240.17ad–25(b). |
| Rule 17Ad–25(b)(1) | § 240.17ad–25(b)(1). |
| Rule 17Ad–25(b)(2) | § 240.17ad–25(b)(2). |
| Rule 17Ad–25(b)(2)(i) | § 240.17ad–25(b)(2)(i). |
| Rule 17Ad–25(b)(2)(ii) | § 240.17ad–25(b)(2)(ii). |
| Rule 17Ad–25(b)(2)(iii) | § 240.17ad–25(b)(2)(iii). |
| Rule 17Ad–25(c) | § 240.17ad–25(c). |
| Rule 17Ad–25(c)(1) | § 240.17ad–25(c)(1). |
| Rule 17Ad–25(c)(2) | § 240.17ad–25(c)(2). |
| Rule 17Ad–25(c)(3) | § 240.17ad–25(c)(3). |
| Rule 17Ad–25(c)(4) | § 240.17ad–25(c)(4). |
| Rule 17Ad–25(c)(4)(i) | § 240.17ad–25(c)(4)(i). |
| Rule 17Ad–25(c)(4)(ii) | § 240.17ad–25(c)(4)(ii). |
| Rule 17Ad–25(c)(4)(iii) | § 240.17ad–25(c)(4)(iii). |
| Rule 17Ad–25(c)(4)(iv) | § 240.17ad–25(c)(4)(iv). |
| Rule 17Ad–25(d) | § 240.17ad–25(d). |
| Rule 17Ad–25(d)(1) | § 240.17ad–25(d)(1). |
| Rule 17Ad–25(d)(2) | § 240.17ad–25(d)(2). |
| Rule 17Ad–25(e) | § 240.17ad–25(e). |
| Rule 17Ad–25(f) | § 240.17ad–25(f). |
| Rule 17Ad–25(f)(1) | § 240.17ad–25(f)(1). |
| Rule 17Ad–25(f)(2) | § 240.17ad–25(f)(2). |
| Rule 17Ad–25(f)(3) | § 240.17ad–25(f)(3). |
| Rule 17Ad–25(f)(3)(i) | § 240.17ad–25(f)(3)(i). |
| Rule 17Ad–25(f)(3)(ii) | § 240.17ad–25(f)(3)(ii). |
| Rule 17Ad–25(f)(4) | § 240.17ad–25(f)(4). |
| Rule 17Ad–25(f)(4)(i) | § 240.17ad–25(f)(4)(i). |
| Rule 17Ad–25(f)(4)(ii) | § 240.17ad–25(f)(4)(ii). |
| Rule 17Ad–25(f)(5) | § 240.17ad–25(f)(5). |
| Rule 17Ad–25(f)(6) | § 240.17Ad–2525(f)(6). |
| Rule 17Ad–25(g) | § 240.17ad–25(g). |
| Rule 17Ad–2525(g)(1) | § 240.17Ad–2525(g)(1). |
| Rule 17Ad–25(g)(2) | § 240.17ad–25(g)(2). |
| Rule 17Ad–25(h) | § 240.17ad–25(h). |
| Rule 17Ad–25(i) | § 240.17ad–25(i). |
| Rule 17Ad–25(i)(1) | § 240.17ad–25(i)(1). |
| Rule 17Ad–25(i)(2) | § 240.17ad–25(i)(2). |
| Rule 17Ad–25(i)(3) | § 240.17ad–25(i)(3). |
| Rule 17Ad–25(i)(4) | § 240.17ad–25(i)(4). |
| Rule 17Ad–25(j) | § 240.17ad–25(j). |

With respect to board governance, Rules 17Ad–25(b), (e), and (f) establish requirements for board composition and independent directors, as discussed in Part II.A. Rules 17Ad–25(c) and (d) establish requirements for the nominating and risk management committees of the board, as discussed in Parts II.B and II.C respectively. With respect to conflicts of interest, Rules 17Ad–25(g) and (h) establish requirements for policies and procedures to identify, document, and mitigate or eliminate such conflicts of interest, as well as an obligation of directors to report such conflicts to the registered clearing agency, as discussed in Part II.D. In addition, Rules 17Ad–5(i) and (j) establish obligations of the board to oversee the management of risks from relationships with service providers for core services, as discussed in Part II.E, and to solicit, consider and document the views of stakeholders, as discussed in Part II.F.

As discussed further in Part III, the compliance date for Rule 17Ad–25 is December 5, 2024, except that the compliance date for the independence requirements of the board and board committees in Rules 17Ad–25(b)(1), (c)(2), and (e) is December 5, 2025.

### Table of Contents



[1] This adopting release also modifies the proposed CFR designations to ensure the regulatory text conforms with section 2.13 of the Document Drafting Handbook. *See* 1 CFR 21.11; Office of the Federal Register, Document Drafting Handbook (Aug. 2018 Edition, Revision 2.1, dated Oct. 2023), *https://www.archives.gov/files/federal-register/write/handbook/ddh.pdf.* Because the Commission proposed the new rules to contain an uppercase letter in their CFR citations, the Commission is modifying the CFR section designations at adoption to replace each such uppercase letter with the corresponding lowercase letter. Accordingly, 17 CFR 240.17Ad–25 will be designated at adoption as 17 CFR 240.17ad–25.

## I. Introduction

Clear and transparent governance arrangements are integral to ensuring that a clearing agency is resilient because, among other things, such arrangements promote accountability and reliability in decision-making.[2] Since the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') in 2010,[3] the Commission has adopted a series of rules intended to promote the resilience of registered clearing agencies,[4] with the goal of establishing an evolving regulatory framework.[5] As discussed in greater detail in the Governance Proposing Release,[6] the Commission has continued to observe and learn from the recurring tensions that exist in the incentive structure of a clearing agency, including their potential effect on the participants of the clearing agency and the broader financial system.[7] Accordingly, the Governance Proposing Release included new rules designed to help ensure that a registered clearing agency can effectively balance the differing incentives that exist among the clearing agency, its participants, and other key stakeholders.[8] The proposed rules included more specific and defined parameters and requirements for governance intended to build upon and strengthen the existing requirements in Rule 17Ad–22 that have a broader and principles-based focus.[9]

The Commission received comments on the Governance Proposing Release from registered clearing agencies, participants of registered clearing agencies and their customers, industry groups representing clearing agencies, their participants, and other market participants, academics, individual investors, and other interested parties.[10] Many commenters were supportive of the proposed rules, though some commenters also expressed concerns regarding specific elements of certain rules. In Part II below, the Commission discusses these comments in detail and modifications made in response to the comments. In addition, the Commodity Futures Trading Commission (''CFTC'') recently adopted new requirements applicable to risk management committees (''RMCs'') and risk working groups (''RWGs'') of derivatives clearing organizations (''DCOs''),[11] topics which are also addressed in the context of registered clearing agencies by the Commission's final rules discussed below. The Commission's final rules promote similar outcomes as the CFTC's rules, such as ensuring robust board oversight of senior management, and informing the board of stakeholder views, though in some cases the Commission has taken a different approach as to specific requirements because Rule 17Ad–25 also addresses additional topics, including board composition, director independence, and conflicts of interest. The differing approaches are explained further in Parts II.C.4 and II.F.7. Finally, these rules are being adopted pursuant to section 765 of the Dodd-Frank Act with respect to clearing of security-based swaps,[12] which specifically directs the Commission to adopt rules to mitigate conflicts of interest for security-based swap clearing agencies.[13]

## II. Discussion of Comments Received and Final Rules

### *A. Board Composition and Requirements for Independent Directors*

#### 1. Proposed Rules 17Ad–25(b), (e), and (f)

Proposed Rules 17Ad–25(b), (e), and (f) would establish requirements related to independent directors serving on the board of a registered clearing agency. First, proposed Rule 17Ad–25(b)(1) would require that a majority of the directors be independent directors, as defined in proposed Rule 17Ad–25(a). The proposed rule would also provide that, if a majority of the voting interests issued as of the immediately prior record date are directly or indirectly held by participants of the registered clearing agency, then at least 34 percent of directors must be independent directors. Proposed Rule 17Ad–25(a) would define an ''independent director'' to mean a director that has no material relationship with the registered clearing agency, or any affiliate thereof. Proposed Rule 17Ad–25(a) also would define ''material relationship'' to mean a relationship, whether compensatory or otherwise, that reasonably could affect the independent judgment or decision-

[2] Release No. 34–95431 (Aug. 8, 2022), 87 FR 51812, 51813 (Aug. 23, 2022) (''Governance Proposing Release'').

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] *See, e.g.,* 17 CFR 240.17Ad–22 (''Rule 17Ad–22''); *see also* Release No. 34–88616 (Apr. 9, 2020), 85 FR 28853, 28855 (May 14, 2020) (''CCA Definition Adopting Release''); Release No. 34–78961 (Sept. 28, 2016), 81 FR 70786 (Oct. 13, 2016) (''CCA Standards Adopting Release''); Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012) (''Clearing Agency Standards Adopting Release'').

[5] Governance Proposing Release, *supra* note 2, at 51814.

[6] *Id.* at 51814–51819.

[7] *Id.* at 51814 (describing the same as ''clearing members and the larger financial community'').

[8] *Id.*

[9] *Id.*

[10] The Commission voted to issue the Governance Proposing Release on August 8, 2022. The release was posted on the Commission website that day, and comment letters were received beginning the following day. The comment period closed on October 7, 2022. Comments received are available on the Commission's website at *https://www.sec.gov/comments/s7-21-22/s72122.htm.* The Commission has considered all comments received since August 8, 2022.

[11] *See* Governance Requirements for Derivatives Clearing Organizations, Final Rule, 88 FR 44675 (July 13, 2023).

[12] Public Law 111–203, 124 Stat. 1376 (2010).

[13] *See* Governance Proposing Release, *supra* note 2, at 51819 & n.49 (stating ''the targeted set of proposed rules for governance included in this release can help ensure that the framework effectively addresses the considerations set forth in Section 765 with respect to clearing of security-based swaps. Although Section 765 directed the Commission to focus on conflicts of interest specifically with respect to security-based swap clearing agencies, the Commission believes that conflicts of interest concerns can arise across all registered clearing agencies regardless of the asset classes served.'').

making of the director, and includes relationships that existed during a lookback period of one year counting back from making the initial independence determination made in accordance with proposed Rule 17Ad–25(b)(2). In addition, proposed Rule 17Ad–25(a) would define ''affiliate'' to mean a person that directly or indirectly controls, is controlled by, or is under common control with the registered clearing agency. Proposed Rule 17Ad–25(b)(2) would require that a registered clearing agency broadly consider all the relevant facts and circumstances, including under proposed Rule 17Ad–25(g), on an ongoing basis, to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency, and is not precluded from being an independent director under proposed Rule 17Ad–25(f), in order to qualify as an independent director. In making such determination, a registered clearing agency must: (i) identify the relationships between a director, the registered clearing agency, and any affiliate thereof, along with the circumstances set forth in proposed Rule 17Ad–25(f); (ii) evaluate whether any relationship is likely to impair the independence of the director in performing the duties of director; and (iii) document this determination in writing. Such documentation requirements would be subject to the recordkeeping and retention requirements that apply to all self-regulatory organizations (''SROs'') under Exchange Act section 17(a)(2) and rules thereunder.

Proposed Rule 17Ad–25(e) would require that, if any committee has the authority to act on behalf of the board, the composition of that committee must have at least the same percentage of independent directors as is required under these rules for the board, as set forth in proposed paragraph (b)(1).

Proposed Rule 17Ad–25(f) would describe certain circumstances that would always exclude a director from being an independent director. These circumstances would include: (1) the director is subject to rules, policies, and procedures by the registered clearing agency that may undermine the director's ability to operate unimpeded, such as removal by less than a majority vote of shares that are entitled to vote in such director's election; (2) the director, or a family member, has an employment relationship with or otherwise receives compensation, other than as a director, from the registered clearing agency or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency; (3) the director, or a family member, is receiving payments from the registered clearing agency, or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency that reasonably could affect the independent judgment or decision-making of the director, other than the following: (i) compensation for services as a director to the board or a committee thereof; or (ii) pension and other forms of deferred compensation for prior services not contingent on continued service; (4) the director, or a family member, is a partner in, or controlling shareholder of, any organization to or from which the registered clearing agency, or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency, is making or receiving payments for property or service, other than the following: (i) payments arising solely from investments in the securities of the registered clearing agency, or affiliate thereof; or (ii) payments under non-discretionary charitable contribution matching programs; (5) the director, or a family member is employed as an executive officer of another entity where any executive officers of the registered clearing agency serve on that entity's compensation committee; or (6) the director, or a family member, is a partner of the outside auditor of the registered clearing agency, or any affiliate thereof, or an employee of the outside auditor who is working on the audit of the registered clearing agency, or any affiliate thereof. Proposed Rules 17Ad–25(f)(2) through (6) would be subject to a lookback period of one year, counting back from making the initial determination required by proposed Rule 17Ad–25(b)(2).

Proposed Rule 17Ad–25(a) would define ''family member'' to include any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person (other than a tenant or employee) sharing a household with the director or a nominee for director, a trust in which these persons (or the director or a nominee for director) have more than fifty percent of the beneficial interest, a foundation in which these persons (or the director or a nominee for director) control the management of assets, and any other entity in which these persons (or the director or a nominee for director) own more than fifty percent of the voting interests.

The Commission is adopting Rules 17Ad–25(b), (e), and (f) generally as proposed but with technical changes to Rule 17Ad–25(a), Rule 17Ad–25(b)(1), Rule 17Ad–25(b)(2), Rule 17Ad–25(b)(2)(i), and Rule 17Ad–25(b)(2)(iii), for the reasons discussed below. In making the technical change to the definition of ''material relationship'' in Rule 17Ad–25(a), the Commission is embedding the reference to a lookback period that was proposed in a standalone sentence into the initial sentence relating to relationships that could affect the independent judgment or decision-making of a director, in order to clarify that the lookback period is part of the overall reference to these relationships. In making the technical change to Rule 17Ad–25(b)(1), the Commission is replacing the term ''voting rights'' with ''voting interests,'' which would be consistent with the terms used elsewhere in the rule text, and which remains consistent with the concept as proposed. In making the technical change to Rule 17Ad–25(b)(2), the Commission is deleting the last proviso that stated, ''in order to qualify as an independent director,'' because this reference is unnecessary and does not describe all of the requirements for qualifying as an independent director. In making the technical change to Rule 17Ad–25(b)(2)(i), the Commission is reordering the language requiring identification of the relationships between a director and a registered clearing agency, and a director and any affiliate of a registered clearing agency. The proposed rule text implied that there needed to be identification of relationships between the registered clearing agency and its affiliates, which is not intended. In making the technical change to Rule 17Ad–25(b)(2)(iii), the Commission is specifying that the documentation requirement applies to both the registered clearing agency's evaluation of director independence *and* its ultimate determination (*i.e.,* whether the director qualifies as an independent director or is not an independent director). Under the proposed text, the phrase ''this determination'' was intended to encompass broad consideration of all the relevant facts and circumstances on an ongoing basis. The Commission is modifying the text in adopted Rule 17Ad–25(b)(2)(iii) to be ''the evaluation and determination'' to specify that the documentation requirement applies to both the evaluation of independence and the ultimate determination regarding independence.

In the Governance Proposing Release, the Commission stated that an

independent director can bolster a board's ability to perform effectively by reducing the potential for financial or other relationships between directors and those persons who are overseen by directors, such as management.[14] Even the appearance of conflicts of interest can reduce confidence in the functioning of the registered clearing agency among direct and indirect participants of the registered clearing agency, other stakeholders, and the public, particularly during periods of market stress when general confidence in market resilience may be low.[15] Indeed, as discussed in the Governance Proposing Release, each of the registered clearing agencies already requires a portion of their directors to have some characteristics of independence (establishing, for example, ''nonexecutive'' or ''public'' directors).[16] Further, the structure of a registered clearing agency and the risk management tools that it employs affect how the interests of owners, participants, and other types of stakeholders align. For example, as discussed in the Governance Proposing Release, the risk mutualizing and trade guaranty features provided by many registered clearing agencies provide for the shift of the consequences of one party's actions to another in certain circumstances, such as after a participant default.[17] These features both affect how different stakeholders maximize their own self-interest and also distinguish the governance of a registered clearing agency from other corporate entities. The Commission stated its belief that registered clearing agency processes involving risk management or director nominations are also implicated in managing the dynamics between owners and participants.[18] The ability of a registered clearing agency to help ensure effective risk management and loss allocation in the event of a default or non-default loss is linked to the interests of the owners of the clearing agency, who may also have financial relationships with the participants (or be the participants) of such registered clearing agency. The Commission stated its belief that requiring a certain percentage of independent directors helps promote the ability of the board to perform its oversight of management function and to support a plurality of viewpoints voiced at the board level.[19] Independent directors would help ensure that, when the interests between owners and participants diverge, the balancing of interests is more manageable because the board would not be composed entirely of directors who have material relationships either to management (such as under a situation where managers approve payments from the registered clearing agency to such director), owners, or participants of the registered clearing agency. Achieving balance between stakeholders with divergent views could help the board adequately consider the respective needs of all such stakeholders and help promote the integrity of, and public confidence in, the registered clearing agency's risk management function.

Comments on the proposed board composition requirements and requirements for independent directors are discussed below.

2. Overall Views

Of the comments received on the Governance Proposing Release, the majority were from individuals. Several expressed high-level views either in support or against the proposal,[20] referencing, for example, their concerns that retail investors are being cheated due to clearing agency greed or conflicts of interest, or requesting retail investor representation on the board. Several commenters were specifically concerned with incidents of failures to deliver with their transactions, but did not discuss the rule proposals in the Governance Proposing Release.[21] Many commenters were under the mistaken impression that the proposal would alter the status of certain entities as SROs.[22] However, the Exchange Act clearly defines registered clearing agencies as SROs,[23] and the proposed rule would have no impact on this status. As a general matter, the concerns expressed by these commenters regarding the perception of conflicts of interest at a registered clearing agency highlight the need to adopt Rule 17Ad–25, including the provisions for independent directors and to address conflicts of interest, to promote confidence in registered clearing agency governance through requirements intended to ensure transparency, fair representation, and effective decision-making at the board level.

Several comments from representatives of trade groups or registered clearing agencies expressed general support for having an independent director requirement as a ''good first step,'' [24] appropriately designed to reduce the risk of conflicts of interest [25] and provide diverse viewpoints [26] in a ''pragmatic'' [27] way. One commenter supported the independent director requirement because it was consistent with public company listing rules and would be particularly useful in capturing a range of perspectives when combined with the requirement of a nominating committee to consider a broad range of views.[28] Another commenter viewed the requirements as consistent with independent director requirements that were already incorporated into its

[14] *See* Governance Proposing Release, *supra* note 2, at 51821.

[15] *See id.* at 51819; *see also id.* at 51812 n.3 (explaining that examples of indirect participants are customers or clients of direct participants or clearing members since they rely on services provided by a direct participant to access the services of the clearing agency).

[16] See *id.* at 51844.

[17] *See id.* at 51822.

[18] *See id.*

[19] *See id.* at 51823.

[20] *See, e.g.,* Timothy Washington (Aug. 12, 2022) (''Washington''); Andres Loubriel (Aug. 12, 2022) (''Loubriel''); Gerald (Aug. 12, 2022) (''Gerald''); Dylan Crosby (Aug. 12, 2022) (''Crosby''); Anonymous (Aug. 12, 2022) (''Anonymous 1''); Josh Zimmerman (Aug. 12, 2022) (''Zimmerman''); Nathan Rohde (Aug. 13, 2022) (''Rohde''); Ian Marshall (Aug. 17, 2022) (''Marshall''); Anonymous (Aug. 26, 2022) (''Anonymous 4''); Harun Krishnan (Aug. 26, 2022) (''Krishnan''); Matthew Fry (Aug. 26, 2022) (''Fry''); the Delois Albert Brassell Estate (Sept. 3, 2022) (''Delois Albert Brassell Estate''); Kaleab Tesema (Sept. 7, 2022) (''Tesema''); Jamario (Oct. 6, 2022) (''Jamario''); Ben Passlow (May 11, 2023) (''Passlow'') (each expressing views in support); *see also* Val Ayrapetov (Aug. 9, 2022) (''Ayrapetov''); George (Aug. 12, 2022) (''George''); Anonymous (Aug. 12, 2022) (''Anonymous 2''); M.B. (Oct. 6, 2022) (''M.B.'') (requesting creation of a retail-specific board member) (each expressing views against).

[21] *See, e.g.,* Crosby, Loubriel; Zimmerman.

[22] *See* Anonymous 1; Christopher Hewitt (Aug. 12, 2022) (''Hewitt''); Mason Smith (Aug. 12, 2022) (''Smith''); Samuel Ryan (Aug. 12, 2022) (''Ryan''); Keith Clark (Aug. 12, 2022) (''Clark''); Dillon (Aug. 12, 2022) (''Dillon''); Evan (Aug. 12, 2022) (''Evan Letter''); John J. Kozubal (Oct. 6, 2022) (''Kozubal''); James Fox (Oct. 6, 2022) (''Fox''); Joe (Oct. 7, 2022) (''Joe''); Anonymous (Oct. 12, 2022) (''Anonymous 5''); Anonymous (Oct. 13, 2022) (''Anonymous 6''); Kens Bane (Jan. 16, 2023) (''Bane'').

[23] *See* 15 U.S.C. 78c(a)(23), (26).

[24] *See* Thomas Price, Managing Director, Operations/Technology, Robert Toomey, Managing Director, Associate General Counsel, Head of Capital Markets, Joseph Corcoran, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association (Oct. 28, 2022) (''SIFMA'') at 2.

[25] *See* Chris Barnard (Sept. 9, 2022) (''Barnard''); Stephen W. Hall, Legal Director and Securities Specialist, and Houston Shaner, Senior Counsel, Better Markets, Inc. (Oct. 7, 2022) (''Better Markets'') at 5; Murray Pozmanter, Managing Director, President, Clearing Agency Services & Head of Global Business Operations, Depository Trust & Clearing Corporation (Oct. 7, 2022) (''DTCC'') at 2.

[26] William C. Thum, Managing Director and Assistant General Counsel, SIFMA Asset Management Group (Oct. 13, 2022) (''SIFMA AMG'') at 8.

[27] Ulrich Karl, Head of Clearing, International Swaps and Derivatives Association, Inc. (Oct. 28, 2022) (''ISDA'') at 6.

[28] Paolo Saguato, Assistant Professor of Law, George Mason University Antonin Scalia Law School (Oct. 6, 2022) (''Saguato'') at 3.

governance structure.[29] Another group of commenters supported the independent director requirement because it was consistent with a whitepaper issued by the group in 2019 concerning the need for enhanced governance at clearing agencies to address their risk-related concerns.[30]

One commenter cautioned against ''completely'' independent directors (*i.e.,* independent from owners and participants, such as academics) creating a situation where clearing agency participants could be under-represented.[31] As discussed further below, the Exchange Act requires that the rules of the clearing agency assure a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs. Another commenter that supported the proposed requirements cautioned against going any further than the proposal—such as by requiring certain types of stakeholders to be represented—stating that a board's effectiveness comes from the skills, personal attributes (including leadership and integrity), and relevant business and risk management experience of its directors, and not simply by drawing directors from various stakeholder groups.[32] As discussed further below, Rules 17Ad–25(b) and (e) address the composition of the board and board committees, and does not go further to address the composition of an advisory group (the constitution of which can serve a wider set of stakeholders because its members need not already be serving on the board to serve on such an advisory group). Exchange Act section 17A(b)(3)(c) directs the Commission to only register clearing agencies whose rules assure a fair representation of participants in, among other things, the selection of directors.[33] In terms of the skills and effectiveness of a board, other requirements of Rule 17Ad–25 help promote highly qualified and effective candidates serving as independent directors. For example, as discussed in Part II.B below, Rule 17Ad–25(c) as adopted requires policies and procedures for a registered clearing agency's nominating committee to have a written process for evaluating directors and nominees for director, including taking into account each nominee's expertise, availability, and integrity, and demonstrating that the board of directors, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives.

Another commenter did not see the problem that the proposed rules would solve, indicating the group's belief that the approach to board composition and board independence was too prescriptive, which could prevent a registered clearing agency from having governance measures that are uniquely suited to manage risks particular to the registered clearing agency.[34] As stated in the Governance Proposing Release, the requirements regarding the representation of independent directors are appropriate to facilitate the consideration and management of diverse stakeholder interests by the board in the overall decision-making process of the registered clearing agency.[35] Regarding the level of prescriptiveness, Rule 17Ad–25(f) identifies situations that, in the Commission's judgment, create material relationships with the registered clearing agency that are incompatible with being an independent director but, other than these specific exclusions, registered clearing agencies would have discretion to evaluate whether a director's relationships to the registered clearing agency are material. Because Rule 17Ad–25 provides registered clearing agencies with such discretion, the Commission set forth the list of specific exclusions in Rule 17Ad–25(f) to ensure a consistent, minimum standard for independent directors across registered clearing agencies.[36] Therefore, the Commission disagrees that the rules are overly prescriptive because of the levels of discretion that are allowed, and disagrees that unique governance measures could not be adopted by registered clearing agencies.

3. Criteria for Independence

One commenter supported the requirement for establishing an overall level of independent directors at 34 percent for participant-owned registered clearing agencies as being sufficient and without the drawbacks of too many independent directors.[37] Another commenter disagreed with the proposal, stating that the Commission should not impose any percentage of independent directors given the differences in organizational structure, markets, and products cleared, among other things, across registered clearing agencies.[38] A separate commenter supported the requirement for independent directors because it would mitigate potential conflicts and also provide better board oversight of the registered clearing agency's risk management and other functions.[39] The proposed requirements for the percentage of independent directors strike a reasonable balance between the competing interests of management, owners, participants, and any parties falling into more than one of those categories. In the Governance Proposing Release, the Commission considered whether a clearing agency's particular organizational structures, markets served, or products cleared support differing minimum levels of independence, and stated that the percentage of participant ownership of the clearing agency is an important factor against which to set the minimum standard for director independence. Commenters have not identified another specific factor that would support modifying the proposed threshold. Further, Rule 17Ad–25 does not impede registered clearing agencies from considering a broad pool of potential candidates to serve as independent directors, to appropriately reflect their different organizational structures, markets served, and products cleared. Therefore, the Commission is adopting the percentages as proposed.

One commenter supported aspects of the ''independent director'' definition but stated that the proposed requirement that a majority of directors be independent is unlikely to resolve all conflicts of interest because registered clearing agency owners will still have ultimate approval of, and influence over, independent directors. The commenter also explained that independent directors still have fiduciary duties to the registered clearing agency and are constrained to act in service of shareholder value when reviewing risk priorities.[40] The value of a particular element of Rule 17Ad–25 is not diminished even though it does not address all potential conflicts of interest. Rule 17Ad–25 is intended to

[29] Kara Dutta, Assistant General Counsel, Intercontinental Exchange, Inc. (Nov. 11, 2022) (''ICE'') at 2.

[30] *See* Frank Baldi, Managing Director, Head of Financial Institutions and Emerging Markets Credit Risk, Barclays, et al. (Oct. 18, 2022) (''Barclays et al.'') at 1.

[31] ISDA at 6.

[32] ICE at 2–3.

[33] *See* 15 U.S.C. 78q–1(b)(3)(c).

[34] Global Association of Central Counterparties (Oct. 7, 2022) (''CCP12'') at 1; *see also* SIFMA at 3; ICE at 3.

[35] *See* Governance Proposing Release, *supra* note 2, at 51821.

[36] *See id.* at 51824 (''Establishing a materiality and reasonableness threshold for such relationships provides a registered clearing agency with discretion to apply this requirement across a range of fact patterns while ensuring that they ultimately facilitate the fair representation of owners and participants.'').

[37] Joseph P. Kamnik, Senior Special Advisor and Regulatory Counsel, Options Clearing Corporation (Oct. 7, 2022) (''OCC'') at 23.

[38] CCP12 at 3.

[39] SIFMA AMG at 8.

[40] Better Markets at 13.

bolster the overall quality of governance (and therefore risk management) at a registered clearing agency. The same commenter also requested clarification that material relationship would include director compensation that is tied to registered clearing agency equity, revenue, volume, or scope of products.[41] While Rule 17Ad–25(f) identifies specific circumstances that establish a material relationship, the definition of ''material relationship'' in Rule 17Ad–25(a) is broad. Circumstances where director compensation includes elements that generate potential conflicts of interest, such as those tying monetary compensation to equity, revenue, volume of activity, or scope of products, generally could create a material relationship under Rule 17Ad–25(a).

The same commenter also suggested that the definition of ''material relationship'' be modified to include any interests that create a reasonable appearance of clouding the judgment of a director, on the basis that even the appearance of a bias erodes trust.[42] Trust is important, especially during times of market stress, but the proposed definition does not need to be modified to address this concern. The definition of ''material relationship'' already contains a ''reasonableness'' element, requiring that such relationships be assessed as they would be perceived by a reasonable person, which would allow a clearing agency to consider and address relationships that create the appearance of a conflict. This reasonableness requirement applies even to relationships or situations that are otherwise not among the exclusions in Rule 17Ad–25(f), because Rule 17Ad–25(f) applies in addition to how the definition of independent director is applied by a registered clearing agency. In this regard, clearing agencies generally should consider this reasonableness element in the context of participants, vendors, or non-controlling shareholders of the clearing agency or its affiliates. Employees of participants may be subject to disqualification under this reasonableness requirement, even if they are not subject to disqualification under Rule 17Ad–25(f). The reasonableness element would apply to an evaluation of the qualifications necessary for being an independent director, which will be contingent on the broad set of facts and circumstances under consideration. The definition also includes relationships that reasonably could affect the independent judgment or decision-making of the director, which seeks to address outcomes that reasonably could happen, even if they have not yet in fact happened. Therefore, the Commission is not modifying the rule in response to this comment.[43]

The commenter further suggested expanding the definition of ''family member'' to include first cousins.[44] The Commission considered this expansion, and also reviewed prior Commission rationales on the appropriate scope of ''family member'' definitions under other Commission rules.[45] In those prior rulemakings, the Commission concluded that the scope of family members included there (which is identical to the scope proposed in the Governance Proposing Release) provides adequate coverage to address regulatory interests because any close ties between a director and a relative that are not already within the definition of ''family member'' (such as cousins of various degrees) can be addressed by using the other provision that applies to all persons who share a household with the director, as a proxy for such close ties rather than serving as a generalized proxy for a particular category of relatives. Moreover, the exclusions that relate to family member activities in Rule 17Ad–25(f) are designed to be a floor, not a ceiling, meaning that other fact patterns may preclude a director from meeting the independence requirement pursuant to the general requirements in Rule 17Ad–25(b) instead of a specific exclusion in Rule 17Ad–25(f).

One commenter stated that many of the prohibitions in Rule 17Ad–25(f)(4) were ''overbroad'' and that not all payments from participants should preclude an independence determination; rather, in the commenter's view, Rule 17Ad–25(f)(4) should include a de minimis threshold and an exemption for the payment of clearing fees.[46] The commenter stated that, in the absence of a de minimis threshold, the rule could exclude registered clearing agency participants that are only receiving a nominal sum for a small service provided to the registered clearing agency. The commenter further stated that clearing fees are a relatively inconsequential component of market participants' cost of business, and it is unlikely that a director could reduce clearing fees without oversight because clearing fee changes must be filed with the Commission. In particular, the commenter stated that its fee refunds should not be covered by this exclusion (which the Commission understands to apply when accrued clearing fees exceed the registered clearing agency's targeted capital amount, so refunding an overpayment does not implicate the same potential conflict as does receiving a payment). Another commenter stated that, in the absence of a de minimis threshold, the rule could exclude candidates for independent director who are only receiving de minimis payments or remuneration or clearing fees.[47]

The exclusion in Rule 17Ad–25(f)(4) would apply to directors who are partners or controlling shareholders of a registered clearing agency participant.[48] The scope of this exclusion is narrow, however; employees, managers, and non-controlling shareholders of a participant could still qualify, allowing for a broad range of potential candidates who have experience with the participant's business. Additionally, although the payments received or made between, for example, a participant and a registered clearing agency may be inconsequentially small from the perspective of the registered clearing agency or the participant as a business entity, that same payment may be meaningful to an individual who is a director and who is a controlling shareholder of the participant. For example, that individual's equity stake in the participant may result in extra personal income for every dollar saved or earned. Due to the potential for personal enrichment, the Commission is not adopting a de minimis amount of payments that would allow a participant's controlling shareholder to serve as an independent director. Because the Commission is not incorporating any de minimis carve out,

[41] *Id.* at 12.

[42] *Id.* at 18–19.

[43] *See infra* Part II.D.2 (similarly addressing comments with respect to the ''reasonableness'' requirement in Rule 17Ad–25(g)).

[44] Better Markets at 20.

[45] *See, e.g.,* Disclosure of Certain Relationships and Transactions Involving Management, Securities Act Release No. 6441, Exchange Act Release No.19290, Investment Company Act No. 12865 (Dec. 2, 1982), 47 FR 55661, 55663 (Dec. 14, 1982) (discussing whether to apply a rule to a class of relatives that is broader than those who live in a household with a reporting person, because there is not complete overlap between the two categories. The Commission considered whether to apply the rule to relatives who could take advantage of financial transactions with a reporting person without living in that reporting person's household. As a corollary, some members of a household may not be relatives either, but both categories were contemplated as a proxy for the existence of close ties between two people).

[46] OCC at 6.

[47] CCP12 at 3.

[48] Specifically, Rule 17Ad–25(f)(4) applies to directors who are partners or controlling shareholders of any organization to or from which the registered clearing agency is making or receiving payments, which would include clearing fee payments made by a participant as a clearing member.

it is not addressing how to calculate such de minimis amount. Accordingly, the Commission also is not addressing whether fee refunds should be included in calculations to establish a de minimis amount of such payments. Nonetheless, and regardless of the circumstances, such controlling shareholder of a participant could still serve on the board as a non-independent director.

A commenter also suggested, as an alternative to explicitly carving out payments for clearing fees from the exclusion in Rule 17Ad–25(f)(4), that the Commission specify that the term ''partner'' therein only refers to someone who has an equity ownership stake in the organization.[49] The term ''partner,'' as used in Rule 17Ad–25(f)(4) as adopted, refers to those with an equity ownership stake in an organization such as an limited partnership or limited liability partnership and does not include any person who simply has the term ''partner'' in her job title without also holding an equity ownership stake in the organization that is sending or receiving payments to or from a registered clearing agency, an affiliate thereof, or a holder of a controlling voting interest of the registered clearing agency.

One commenter suggested that the Commission require board representation by customers of registered clearing agency participants because such customers are bound to registered clearing agency obligations that are theoretically uncapped, bear mutualized risk, and could provide unique perspectives on risk management issues.[50] Another commenter requested that the Commission add a requirement for registered clearing agency boards to have representatives from customers of registered clearing agency participants, such as buy-side market participants, due to their understanding of the risks and impacts of registered clearing agency decisions on a wide variety of such market participants and their clients.[51]

In considering the application of the rule, it is important to distinguish the contractual obligations and liabilities that exist between registered clearing agency participants and the registered clearing agency itself on the one hand, and between registered clearing agency participants and their own customers on the other. The Commission does not agree that customers of registered clearing agency participants are bound *to the clearing agency* for uncapped obligations. Customers of registered clearing agency participants do face contractual performance risk vis-à-vis their counterparty to a given transaction when they rely on a registered clearing agency participant to facilitate the clearing of such transaction on the customer's behalf, but the risk of non-performance in this case differs from the risk that parties to contracts generally assume. Notably, because the registered clearing agency may guarantee the transaction, the risk to the customer may be lower than other types of contractual relationships due to this extra layer of protection (notwithstanding the particular arrangements that may exist between the participant and its customer in the event of a default). The risk exposure between a participant and its customer is thus different in nature and scope than the risk exposure between a registered clearing agency and its participant. Consequently, the nature of these contractual obligations does not support extending by Commission rule representation on the board of a registered clearing agency to the customers of registered clearing agency participants. However, the Commission recognizes the importance of the board considering the views of stakeholders, including customers of registered clearing agency participants, and the Commission has provided opportunities for such views to be considered under Rule 17Ad–25(c) when nominating directors, and when soliciting viewpoints and feedback consistent with Rule 17Ad–25(j).[52]

One commenter agreed with the Commission's approach to allow registered clearing agencies (and in particular, nominating committees thereof) to exercise judgment to determine what constitutes materiality under the ''material relationship'' definition, rather than have it further defined, such as by numerical thresholds of financial compensation.[53] The commenter stated that such numerical thresholds would not be useful if established in advance. Likewise, the commenter stated that the concept of ''control'' should be left to the determination of the nominating committee of the registered clearing agency, as long as the analysis is documented and auditable.[54] The Commission agrees that numerical thresholds may not reflect the potential intersection of a director's personal finances and the ''material relationship'' definition, particularly when such thresholds have been formulated *ex ante,* and that, more generally, it is appropriate for the nominating committee to determine whether a director qualifies as an independent director, as further discussed in Part II.B.2 below.[55]

One commenter drew a comparison between the Commission's required levels of independent directors and the levels of a related category under the European Market Infrastructure Regulation (''EMIR'') [56] called Independent Non-Executive Directors (''INEDs'').[57] The commenter stated that currently EMIR requires at least one-third (and no fewer than two) of clearing agency board members to be INEDs. The commenter stated that requiring more INEDs would not result in greater transparency or objective governance, and that requiring a majority of the board to be INEDs would result in large boards that are ''functionally inefficient.'' [58] The commenter also pointed out that the INED definition excluded representatives of clearing agency participants, regardless of whether those clearing agency participants were shareholders or not. Consequently, the commenter requested greater alignment between EMIR and the Commission's proposal. The Commission supports alignment where practicable and concludes that the two provisions are not in conflict with one another as currently structured based on the following: although the EMIR standard has a lower percentage requirement, it also defines independence more strictly than the Commission's proposal, and so the pool of eligible directors under EMIR is smaller than under Rule 17Ad–25. For example, if a clearing agency dually

[49] OCC at 7.

[50] SIFMA AMG at 8.

[51] Sarah A. Bessin, Associate General Counsel, and Nhan Nguyen, Assistant General Counsel, Investment Company Institute (Oct. 7, 2022) (''ICI'') at 7.

[52] *See infra* Parts II.B.3 (discussing the requirements in Rule 17Ad–25(c)(4)(ii) for the nominating committee to demonstrate that it has considered whether a particular nominee would complement the other board members, such that, if elected, the board, taken as a whole, would represent the views of the owners and participants, including a selection of directors that reflects the range of different business strategies, models, and sizes across participants, as well as the range of customers and clients the participants serve) and II.F (discussing the requirements in Rule 17Ad–25(j) to solicit, consider, and document stakeholder viewpoints).

[53] Claire O'Dea, Director, Government Relations and Regulatory Strategy, Americas, London Stock Exchange Group (Oct. 7, 2022) (''LSEG'') at 3–4.

[54] *Id.* at 4.

[55] *See infra* Part II.B.2 (further discussing the purview of the nominating committee and the comment regarding ''control'').

[56] *See* Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended, *https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012R0648-20200101.*

[57] LSEG at 3.

[58] *Id.*

registered under EMIR and with the Commission had a board with six persons, with two persons representing a controlling shareholder, two persons who were risk management professionals at two participants, and two persons who were independent academics, then that board could (with all other factors being met) comply with both the Commission's requirement of a majority of independent directors (four out of six), and the EMIR requirement of one-third INEDs (two out of six). Therefore, the requirements for INEDs under EMIR and for independent directors under the Commission's proposal do not conflict with each other.

The commenter also stated that operating under two definitions of ''independent director'' would require a dual registrant to undertake two sets of analyses because a director could qualify as independent under one standard but not the other, though the commenter also stated that the Commission's approach would not raise any compliance issues by itself.[59] The commenter encouraged alignment where possible. In this situation, the additional burden of conducting evaluations under these two standards is insignificant, because the evaluation process of a director's material relationships is highly fact-specific. The evaluation of whether a director meets the standard for independence generally should be broad and thorough, and it generally should turn on the specific facts of each director's individual circumstances. A broad inquiry that satisfies the requirement to determine whether material relationships exist will likely already reveal whether a candidate meets the criteria set forth in each respective jurisdiction, so it is unlikely that fully aligning the Commission's rules with the EMIR standard will result in cost or time savings.

In connection with the request for harmonization, the commenter stated that EMIR's limited INED requirement helps ensure that the board retains expertise sufficient to make decisions about budget, investments, and commercial strategy.[60] As discussed above, the Commission's definition of ''independent director'' would allow participants with experience on these strategic matters to also qualify as an independent director, so the concern from the commenter that a majority of the board being independent directors would result in inexperienced decision makers is misplaced, due to the differences in the scope of the respective definitions of INED and the Commission's proposal.

With respect to the inclusion of affiliates of the registered clearing agency in the definition of ''material relationship'' and in Rule 17Ad–25(f), the commenter expressed preference for consistency with how EMIR handles affiliates.[61] The commenter stated that under the EMIR regulatory framework, a clearing agency that is part of a group must evaluate whether it has the necessary level of independence to meet its regulatory obligations as a distinct legal person, and whether its independence could be compromised by the group structure or by any board member also being a member of the board of other entities of the same group. Therefore, under EMIR, if a clearing agency has the necessary level of independence to meet its regulatory requirements, a director could be considered independent even if she held a non-executive role at another clearing agency within the same group, which allows for consistency in risk management and cross-fertilization of ideas within a group.

The Commission used the term ''affiliates'' in the definition of ''independent director'' with respect to material relationships, and the exclusions in Rule 17Ad–25(f), to ensure an appropriate minimum standard across clearing agencies with respect to the board composition requirements in the rule. If affiliate relationships were excluded from the definition of ''independent director'' with respect to material relationships, a registered clearing agency could create an organizational structure where a majority of the board is aligned—such as through compensation—with an affiliate of the clearing agency. Benefits associated with the exchange of ideas can be obtained in other manners, such as information sharing agreements among affiliated companies. At the clearing agency, risk management should be tailored to the specific risks facing a particular registrant consistent with the statutory requirements for registration as a clearing agency, not with respect to its overall corporate group or affiliates. While affiliate relationships may, in some instances, enable a clearing agency to see risks outside of its own particular clearing agency function or services, consistency across affiliates is not per se an important risk management goal. A registered clearing agency generally should focus on identifying and managing the risks that it faces, rather than risks to its affiliates. Therefore, the Commission is adopting the definition of ''material relationship'' and the exclusions in Rule 17Ad–25(f) to include affiliates of a clearing agency as proposed.

As to the adequacy of the Commission's use of one-year lookback periods in Rule 17Ad–25(f), one commenter recommended a longer period of three to five years as an adequate lookback period.[62] The commenter stated that there is a five-year requirement under EMIR, and that a one-year requirement could be considered too short because some payments may not be received by a director for a while (*e.g.,* some payments may be deferred for up to four years), some projects to which a person has played a key role may not yet be delivered, and informal relationships may continue. The obligation not to have a material relationship applies in an ongoing manner, not simply to a moment in time. Although the lookback period that applies to the ''material relationship'' definition and to the list of exclusions in Rule 17Ad–25(f) covers the one-year period prior to the date that a determination of independence is made, delayed payments that a director might receive while serving as an independent director would be addressed due to the ongoing application of Rule 17Ad–25(f). For instance, if an independent director received payments in the third year of his or her term, such payments were related to relationships that existed two years prior to the start of that term, and such payments precluded a director from being independent under Rule 17Ad–25(f), then the director would cease to qualify as an independent director at the time of the payment—irrespective of the lookback period. Consequently, extending the lookback period is not necessary to address any delayed or deferred activity because a director must meet the standard for an ''independent director'' on an ongoing basis under the requirements of Rule 17Ad–25(b).

Several commenters stated that the possible inclusion of employees of clearing agency participants as independent directors on registered clearing agency boards would bring several benefits, including increasing the candidate pool, providing industry expertise, promoting a strong alignment between the risk management and operational integrity of the registered clearing agency, and bringing diverse

[59] *Id.* at 6.

[60] *Id.* at 4.

[61] *Id.* at 5.

[62] LSEG at 5.

perspectives.[63] One commenter disagreed, stating that the definition of ''material relationship'' should be expanded to ensure that employees or other representatives of participants be excluded from qualifying as independent,[64] while another commenter stated that the candidate pool from among employees of clearing agency participants would shrink under the proposed rules.[65] Having qualified, experienced persons serving in these director roles promotes sound risk management practices at the registered clearing agency because such persons bring necessary technical experience in clearing agency risk management. The Commission supports the inclusion of employees of participants in the potential pool of candidates for independent director in order to make such experienced personnel available for consideration as candidates, provided that such personnel do not have relationships that would preclude them from being independent directors. The Commission acknowledges that the candidate pool would shrink to the extent that experienced employees of participants also have material relationships that pose a conflict of interest (for example, if such employees' judgment or independent decision-making could be affected by their relationships with a participant), other than being an employee of a participant.

Additionally, a separate commenter requested that the independent director definition explicitly require independence from dominant market participants.[66] The commenter stated that the derivatives markets, within which the Commission regulates clearing agencies for security-based swaps, continue to be dominated by a few market participants, thereby concentrating risk and skewing incentives towards the largest clearing agency participants, at the expense of appropriate risk management and competition.[67] The commenter suggested that the lowering of the majority requirement to 34 percent of independent directors when participants are a majority of owners should have restrictions as to the size of the clearing agency participants that can qualify, to exclude dominant market participants.[68] The commenter disagreed with the Commission that existing regulations, such as Rule 17Ad–22, have adequately addressed market dominance by certain participants, and stated that anecdotal evidence from abroad suggests that clearing agencies hold such dominant participants to less scrutiny with respect to risk management requirements, while small and medium-sized entities struggle to maintain access to central clearing.[69]

The liability inherent to being a clearing agency participant, to which participants of all sizes subject themselves, aligns their interests with the goal of a well-managed registered clearing agency, even if incentives to free-ride, and thereby have the costs of managing the clearing agency borne by other participants, remain. Because Exchange Act section 17A(b)(3)(C) states that ''the Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency,'' [70] it remains appropriate to not summarily restrict representation based on volume of use, which is what the commenter is requesting. Therefore, the Commission is not removing the ability of employees or other representatives of certain sizes of clearing agency participants to qualify as independent directors, provided all other requirements of Rule 17Ad–25 are met.

4. Incentive Structures

One commenter requested that the Commission undertake a comprehensive study of how various ownership models allocated incentives among owners and participants of registered clearing agencies, stating that different ownership models might each require a special regulatory approach to ensure a full alignment of incentives among stakeholders.[71] In particular, the commenter stated that conflicts of interest arise in the investor-owned model, where some participants are not owners but still face mutualized risk at the clearing agency, as compared to a participant-owned model. The rule already addresses the distinction between clearing agencies that are majority-owned by participants and other types of clearing agencies by applying a 34 percent independent director requirement to the former category. The commenter expressed the view that applying a different standard for independent directors between participant-owned and investor-owned clearing agencies is unnecessary, in part, because the commenter read the economic analysis in the Governance Proposing Release to state that all participant-owned clearing agencies already have boards with a majority of independent directors.[72] However, Table 3 in the Governance Proposing Release discussed different criteria that applied to certain directors,[73] and the Governance Proposing Release did not discuss the extent to which these criteria may differ from the proposed definition of and proposed requirements for independent directors. Importantly, although registered clearing agencies may currently label some directors as ''independent,'' such directors may not meet the requirements for an ''independent director'' under Rule 17Ad–25. Application of Rule 17Ad–25 to existing registered clearing agencies will impose composition standards that better serve the goals of Exchange Act section 17A than current practice. Additionally, Rule 17Ad–25 will apply to prospective applicants that may seek to be registered clearing agencies in the future—not only the current set—and so establishing a standard that existing registered clearing agencies may already satisfy can nonetheless still ensure a certain minimum standard across potential future applicants and registrants. Therefore, the Commission is not modifying the application of the 34 percent independent directors versus a majority of independent directors in the final rule.

The same commenter also stated that, if a requirement for a majority of independent directors leads to effective board oversight of management, then all registered clearing agencies—not just those that are investor-owned—should be subject to that standard.[74] However, the ''independent director'' requirement in Rule 17Ad–25 considers, in addition to a director's independence from management, a director's material relationships with a registered clearing agency's affiliates, owners, vendors, customers, and controlling interests of participants. Because the requirements in Rule 17Ad–25 preclude an individual from serving as an independent director when such material relationships reasonably could affect the independent judgment or decision-making of the director, a registered clearing agency that is majority-owned by participants

[63] *See* DTCC at 4; Saguato at 3 (supporting the inclusion of employees of participants because they have substantial financial exposure and a commitment to the resilience of the participant).

[64] James Tabacchi, Chairman, Independent Dealer and Trader Association (Oct. 7, 2022) (''IDTA'') at 1; *see also* Zimmerman (expressing general concerns about potential conflicts of interest among directors and senior managers).

[65] CCP12 at 3.

[66] Better Markets at 16.

[67] *Id.* at 10.

[68] *Id.* at 17.

[69] *Id.* at 16–17.

[70] 15 U.S.C. 78q–1(b)(3)(C).

[71] Saguato at 2.

[72] *Id.* at 3.

[73] *See* Governance Proposing Release, *supra* note 2, at 51844.

[74] Saguato at 3.

could determine that an employee of an owner-participant has relationships that preclude the employee from serving as an independent director—not on the basis of her employment relationship to the participant but rather other potential entanglements that may emerge from the employee's other material relationships with the clearing agency. For example, if an employee of an owner of a clearing agency received stock options as part of a compensation package, that employee has interests tied to the profits of the clearing agency distinct from an employee who receives stock options of a clearing agency participant that is not also an owner of a clearing agency. The existence of such interests tied to profit that carry through ownership structures back to the clearing agency poses a potential conflict of interest for a director of that clearing agency. In this way, a registered clearing agency may determine that employees of owners are less likely than employees of participants to satisfy the independent director requirement. Applying a 51 percent requirement to registered clearing agencies that are majority-owned by their participants could, in the view of a registered clearing agency evaluating the material relationships of its nominees for independent directors, result in minority representation of owners and participants. Therefore, the rule applies a lower threshold to participant-owned clearing agencies to provide the shareholders of such a registered clearing agency greater discretion to nominate, as independent directors, candidates from among, for example, the employees of participant-owners. Applying the higher standard to all clearing agencies, solely to insulate the board from influence by management, could restrict access to representatives of participant-owners in a way that may impair the board's ability to oversee the clearing agency's risk management function effectively.

One commenter agreed that the proposed requirements for independent directors address conflicts of interest, but the commenter also stated that the solution was incomplete to address the problem and so recommended that the Commission also adopt a ''skin-in-the-game'' requirement.[75] Specifically, this commenter stated its belief that it is necessary to align the incentives between a clearing agency and its participants by requiring the clearing agency to subject a meaningful amount of its own capital to potential loss after a default of a participant, in particular after the defaulting participant's margin and guaranty fund contributions are used to satisfy its obligations, but before any margin or guaranty fund contributions of other non-defaulting participants are used to satisfy the obligations of the defaulting participant. This idea seeks to encourage a clearing agency to manage risks well, to prevent its own capital from being lost during a default. This commenter's suggestion is beyond the scope of the present rulemaking.

One commenter expressed concern that employees of participants who are acting as independent directors and representing the interests of the clearing agency could have conflicts of interest between these two roles.[76] The commenter recommended that the Commission impose a requirement for such persons to have due regard to market stability in their role at the clearing agency. Directors do not need to have a specific obligation applied to them in their individual capacity to consider market stability. Rules 17Ad–22(e)(2)(ii) and (iii) require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that clearly prioritize the safety and efficiency of the covered clearing agency and support the public interest requirements in Exchange Act section 17A.[77] These existing requirements are sufficient to ensure a registered clearing agency has due regard for financial stability.

One commenter agreed with the Commission's concerns that a small number of participants—if allowed to exercise control over a clearing agency—can promote margin or other requirements that are not commensurate with the risks of a participant's specific products, portfolio market, business model, and size, which could lead to a concentration of risk in a few dominant market participants who benefit.[78] The commenter suggested that the Commission adopt rules that would address non-independent directors and would require diversity among participant representation on the board, based on size and level of specialization by said participants. Otherwise, the commenter suggested, the representation among participants will be lopsided, leading to greater concentration of risk among the clearing agency's largest participants. The Commission agrees that the interests of participants are not always homogenous or aligned, and therefore, the interests of smaller participants can diverge from those of the largest. However, the Exchange Act requirement for fair representation allows for the consideration of proportionality as an element.[79] Although all participants are equally exposed to default risk, larger firms may be more impacted by policies that apply based on transaction volume. Thus, it can be appropriate to apportion representation according to use of the clearing agency, even if an effect of this approach is to be disproportionate as to the number of small, medium, or large participants represented on the board relative to the total number of small, medium, or large participants in a clearing agency's customer base at any particular time. Further, there could be arguments that reducing the degree of proportionality of representation relative to use of the clearing agency could lead to negative externalities that disproportionately impact larger participants. Accordingly, the Commission is declining to expand the scope of this rule to develop participant categories and to require certain level of participant representation on the board as non-independent directors among those categories.

5. Ownership Structures

One commenter stated that the largest clearing agency participants do not necessarily need personal influence over a director because they possess economic leverage over the clearing agency.[80] Additionally, the commenter requested that special attention be paid towards participants at registered clearing agencies that clear derivatives products because of the risk posed to effective governance by an ''oligopoly'' of market power exercised by certain derivatives dealers.[81] Instead of relying on independent directors as a bulwark against conflicts of interest, the commenter suggested restoration of the ownership limits that were previously proposed in Regulation MC to address market concentration.[82] The commenter further suggested that the Commission go beyond what was originally proposed in Regulation MC and add restrictions

[75] Better Markets at 5–6, 12–14.

[76] *See* ISDA at 6.

[77] *See* 17 CFR 240.17Ad–22(e)(2)(ii), (iii); *see also* 17 CFR 240.17Ad–22(d)(8) (requiring registered clearing agencies that are not covered clearing agencies to establish, implement, maintain and enforce governance arrangements that are clear and transparent to fulfill the public interest requirements in Exchange Act section 17A).

[78] IDTA at 2–3.

[79] *See* 15 U.S.C. 78q–1(b)(3)(C) (''The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.'').

[80] Better Markets at 14.

[81] *Id.* at 10.

[82] *Id.* at 15; *see also* Exchange Act Release No. 63107 (Oct. 14, 2010), 75 FR 65882 (Oct. 26, 2010) (proposing Regulation MC).

on commercial arrangements for volume, such as volumetric discounts, rebates, or revenue sharing. This suggestion goes beyond the scope of this rulemaking because they concern restrictions on commercial arrangements rather than requirements for board composition and governance.

The commenter also suggested expanding the definition of ''affiliate'' to deem all owners and shareholders as affiliates, under the reasoning that a handful of dominant shareholders could ''collude'' among one another to exercise constructive control over a clearing agency, even if each individual shareholder did not meet the definition for control itself.[83] Many participants are also shareholders of a clearing agency, and so if the affiliate definition were to be expanded, it would restrict employees of many participants from meeting the independent director definition as a result of the exclusion in Rule 17Ad–25(f)(2). The Commission is concerned that such an expanded definition could interfere with the ability of a clearing agency to afford fair representation to participants, as contemplated by Exchange Act section 17A(b)(3)(C), which discusses the ability of participants to participate in board governance. In addition, Rule 17Ad–25 includes elements directed at the problems of ''collusion'' in multiple ways, and Rules 17Ad–25(g) and (h), and the associated requirements to address and disclose conflicts of interest, are better suited to address such potential ''collusion'' among certain shareholders because they are broad-based and not restricted to one potential source of conflicts (*i.e.,* affiliates).[84]

6. Circumvention

One commenter expressed concern that the proposal did not specify who at the clearing agency should determine whether a fact pattern meets the definition of ''material relationship,'' reasoning that if the board can make that determination, there could be an incentive on the board of directors to give each other a ''free pass'' as to their potentially objectionable relationships.[85] Instead, the commenter suggested an explicit requirement for disinterested compliance officers or qualified outside professionals to determine whether material relationships exist. The proposed rules did not specify who at the clearing agency should evaluate relationships under this definition, and the Commission has modified the final rules to specify that the nominating committee is required to evaluate all board members under the independent director standard, as discussed further in Part II.B.2.

Some commenters provided recommendations that went beyond the composition of the board and instead addressed the authority of a board more generally. Specifically, some commenters requested that the Commission apply more rigorous governance procedures to clearing agencies with respect to their emergency powers as set forth in their rulebooks, which the commenters stated were broad and vaguely defined.[86] But emergency powers exist at two levels for many clearing agencies: those provisions that impact the rights and obligations of the board, as set forth in the organizational documents of the legal entity itself (such as the ability of the board to act without a quorum in the event of an emergency, such as a terrorist attack),[87] and those provisions that impact the clearing agencies' rights and obligations with respect to the clearing members.[88] Although the Commission's rules do not directly impact the parameters around which emergency powers can be exercised, either at the board level or under the rules of the clearing agency, they do address who will make decisions when exercising such emergency powers. Ensuring that decision-making processes are clear, transparent, and fair, and that market participants have confidence in those processes in an emergency—including that neither clearing agency owners nor participants will dominate the decision-making process to achieve their own ends—can help reassure those who may be significantly impacted by such decisions. Rule 17Ad–25 meaningfully addresses such generalized concerns about the fair and even-handed use of emergency powers by establishing new standards for board governance applicable to registered clearing agencies.

Finally, one commenter suggested that the majority independent director requirement could be evaded by any supermajority requirement for voting or quorums of the board.[89] The Commission is aware that some registered clearing agencies currently apply supermajority requirements in certain scenarios, such as a requirement that three-fourths of an entire board shall constitute a quorum for purposes of electing the board chair.[90] Policies and procedures to identify, mitigate, or eliminate existing or potential conflicts of interest required under Rule 17Ad–25(g) generally should provide for the clearing agency to evaluate whether any supermajority requirements in any of the registered clearing agency's rules, policies, and procedures would allow directors with potential conflicts of interest to steer the clearing agency in service of those personal interests by avoiding any mechanisms that might require mitigation or elimination (*e.g.,* recusal by the director on the matter at hand) of the conflict of interest. A registered clearing agency generally should consider whether its policies and procedures under Rule 17Ad–25(g) are ''reasonably designed'' if provisions of its rules, policies or procedures would allow non-independent directors to exercise disproportionately greater control of certain board decisions beyond what their numbers would otherwise allow.[91]

[83] Better Markets at 19.

[84] *See infra* Part II.D (further discussing final Rules 17Ad–25(g) and (h)).

[85] Better Markets at 19.

[86] Barclays et al. at 3; *see also* SIFMA at 4 (stating that ''greater transparency and a more rigorous governance process, including consultation with primary regulators, regarding the use of emergency powers should help further confidence in the overall financial system and ensure that affected stakeholders are aware and have buy-in when such powers are used.''); ISDA at 2.

[87] *See, e.g.,* Bylaws, The Option Clearing Corporation, at Article II, Section 15 (stating, ''During any emergency which results, directly or indirectly, from an attack (including a terrorist attack) on the United States or on a locality in which the Corporation maintains an office or customarily holds meetings of the Board of Directors, or from a war, armed hostilities, insurrection or other calamity involving the United States or any such locality, or from any nuclear or atomic disaster, or from any other catastrophe, disaster, (including any environmental or natural disaster), communications systems failure, or other similar condition, in which a quorum (as specified in Article III of the By-Laws) of the Board of Directors or a standing committee thereof cannot readily be convened for action (an ''Emergency''), the following provisions of this Section 15 shall be operative notwithstanding any other provision in any of the sections (other than Section 110) of the Delaware Corporation Law or in the Certificate of Incorporation, By-Laws or Rules of the Corporation. The Chairman, Chief Executive Officer, Chief Operating Officer or, if it is not feasible for the Chairman, Chief Executive Officer, or Chief Operating Officer to take such action, then another officer who is a Designated Officer is authorized to declare the existence of such Emergency and to declare this By-Law to be in effect.''), *https://www.theocc.com/company-information/documents-and-archives/by-laws-and-rules.*

[88] *See, e.g.,* ''Rule 38: Market Disruption and Force Majeure,'' DTC Rulebook, *https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf.*

[89] Better Markets at 18.

[90] *See* Organizational Certificate of the Depository Trust Corporation, *https://www.dtcc.com/legal/rules-and-procedures.*

[91] *See infra* Part II.D.2 (further discussing the ''reasonably designed'' and ''reasonableness'' elements of Rules 17Ad–25(g) and (h)).

*B. Nominating Committee*

1. Proposed Rule 17Ad–25(c)

Proposed Rule 17Ad–25(c)(1) would require each registered clearing agency to establish a nominating committee and a written evaluation process whereby such nominating committee shall evaluate individual nominees to serve as directors. Proposed Rule 17Ad–25(c)(2) would require that (i) independent directors compose a majority of the nominating committee, and (ii) an independent director chair the nominating committee. Proposed Rule 17Ad–25(c)(3) would require the nominating committee to specify and document fitness standards, which must be approved by the board. Such fitness standards for serving as a director would need to be consistent with all the requirements of proposed Rule 17Ad–25, and also would include that the individual nominee is not subject to any statutory disqualification as defined under section 3(a)(39) of the Exchange Act.[92] Proposed Rule 17Ad–25(c)(4) would require the nominating committee to document the outcome of the clearing agency's written evaluation process in a manner that is consistent with the written fitness standards required under proposed Rule 17Ad–25(c)(3). The process would require the nominating committee to: (i) take into account each nominee's expertise, availability, and integrity, and demonstrate that the board, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives; (ii) demonstrate that the nominating committee has considered whether a particular nominee would complement the other board members, such that, if elected, the board, taken as a whole, would represent the views of the owners and participants, including a selection of directors that reflects the range of different business strategies, models, and sizes across participants, as well as the range of customers and clients the participants serve; (iii) demonstrate that the nominating committee considered the views of other stakeholders who may be affected by the decisions of the registered clearing agency, including transfer agents, settlement banks, nostro agents, liquidity providers, technology or other service providers; and (iv) identify whether each selected nominee would meet the definition of independent director in proposed Rules 17Ad–25(a) and (f), and whether each selected nominee has a known material relationship with the registered clearing agency or any affiliate thereof, an owner, a participant, or a representative of another type of stakeholder of the registered clearing agency described in (iii) above.

In the Governance Proposing Release, the Commission explained that some registered clearing agencies currently use governance arrangements other than a nominating committee to select certain directors.[93] It also explained that, while the proposed rule would not prohibit such approaches, it would require that any such nominees be submitted first to the nominating committee for evaluation—before being considered by the boardpursuant to a written evaluation process established by the registered clearing agency.[94]

With respect to proposed Rule 17Ad–25(c)(4)(iii), which would give the nominating committee discretion to determine how to consider the views of other stakeholders, the Commission stated that relevant stakeholders generally would include persons and entities that access the national system for clearance and settlement indirectly (*e.g.,* institutional and retail investors), entities that rely on the national system for clearance and settlement to more effectively provide services to investors and market participants, and other market infrastructures.[95]

Commenters generally supported the proposed rules addressing the nominating committee.[96] As discussed in more detail below, commenters sought clarity regarding discussion in the Governance Proposing Release stating that the nominating committee would be the ''exclusive venue'' for considering director nominees, as discussed further below. In addition, some commenters recommended modifying the proposed approach to participation by small and medium-sized firms on the board, and regarding the percent of directors that are independent directors serving on the nominating committees. The Commission addresses each of these topics in Parts II.B.2 through II.B.4.

2. As ''Exclusive Venue'' for Considering Nominees

Several commenters sought clarity regarding statements in the Governance Proposing Release that the nominating committee be the ''exclusive'' venue for considering nominees.[97] As discussed further below, the Commission is modifying the rule being adopted to address more clearly scenarios in which directors may be nominated or appointed directly by shareholders pursuant to the organizational documents of the registered clearing agency outside of the process established by the nominating committee.

First, one commenter recommended that the Commission modify the rule so that the nominating committee only conduct written evaluation of nominees and not appointees that may be selected via other mechanisms in the governance structure.[98] For example, OCC allows certain participant exchanges to select ''Exchange Director'' nominees for election to OCC's board. The proposed rule text does not address this specific type of selection process, but as discussed in the Governance Proposing Release,[99] proposed Rule 17Ad–25(c) would not prohibit the selection of such directors appointed pursuant to such a process. Nonetheless, as previously discussed in the Governance Proposing Release, it would require that any such nominees be submitted first to the nominating committee for evaluation—before being considered by the board—pursuant to a written evaluation process established by the registered clearing agency.[100] This proposed requirement would help ensure that nominees are evaluated in a manner consistent with the requirements for independent directors and other qualifications to serve.

Accordingly, as proposed, Rule 17Ad–25(c) was intended to ensure that, with respect to all nominees and appointed directors, the nominating committee would evaluate each nominee or appointee for director, no matter the source of her nomination or equivalent selection as director, against the standards for fitness and

[92] As explained in the Governance Proposing Release, *supra* note 2, at 51828 & n.107, 15 U.S.C. 78q–1(a)(3)(C) identifies the circumstances that subject a person to ''statutory disqualification'' with respect to membership or participation in, or association with a member of, a self-regulatory organization, such as a registered clearing agency.

[93] Governance Proposing Release, *supra* note 2, at 51829 (describing these arrangements other than a nominating committee as ''other governing bodies and/or constituents of their organizational structure'').

[94] *Id.*

[95] *Id.* at 51830.

[96] *See, e.g.,* Better Markets at 4; DTCC at 5; IDTA at 4; ISDA at 6; LSEG at 8; OCC at 3; Saguato at 3. *But see* ICE at 3 (describing the proposed approach as ''too prescriptive'').

[97] DTCC at 5; LSEG at 8; OCC at 7; Saguato at 4; *see also* Governance Proposing Release, *supra* note 2, at 51830 (requesting comment on the following: ''Is it appropriate for the Commission to require that the nominating committee be the exclusive venue for evaluating nominees for director to the board of directors? What alternative arrangements or processes might also be appropriate for evaluating director nominees?'').

[98] OCC at 7–8.

[99] *See* Governance Proposing Release, *supra* note 2, at 51829.

[100] *See id.*

independence established by Rule 17Ad–25.[101] This ensures that the board, the participants of the registered clearing agency, and ultimately other stakeholders and the public, have confidence in the fitness of directors generally and in the independence standard applied to directors to qualify as independent directors. The commenter's recommended approach would be inconsistent with the purpose and intent of proposed Rule 17Ad–25 because proposed Rule 17Ad–25(c) was intended to ensure that, with respect to all directors, the nominating committee would evaluate each nominee, no matter the source of their nomination, against the standards for fitness and independence established by Rule 17Ad–25. To the extent that any directors are ''appointed,'' it is appropriate to subject such ''appointees'' to the same standards as other nominees for director. Doing so would not slow or otherwise stymie the appointment of such directors because, regardless of how they are selected to serve on the board, all directors are subject to the same fitness standards and also would be subject to disclosure requirements regarding the reporting of potential conflicts of interest and material relationships.[102] Specifically, Rule 17Ad–25(c)(4)(ii) requires the nominating committee to demonstrate that it has considered whether a particular nominee would complement the other board members, such that, if elected, the board of directors, taken as a whole, would represent the views of the owners and participants, including a selection of directors that reflects the range of different business strategies, models, and sizes across participants, as well as the range of customers and clients the participants serve. Because this requirement is focused on board composition, excluding any directors from the requirement would undermine the purpose of the rule and the ability of the nominating committee to evaluate board composition as a whole.

Similarly, proposed Rule 17Ad–25(c)(4)(iv) requires the nominating committee to identify whether each nominee has a known material relationship with the registered clearing agency or any affiliate thereof, an owner, a participant, or a representative of another stakeholder of the registered clearing agency. Because this requirement establishes a baseline against which the registered clearing agency will need to evaluate potential conflicts of interest, regardless of whether a director is intended to be independent, the nominating committee should evaluate appointed directors as well. Such requirement helps ensure that the clearing agency can evaluate potential conflicts of interest that may require a director to recuse as to certain matters before the board. The Commission therefore is not modifying the rule to exclude from evaluation by the nominating committee nominees or directors who are appointed by other means pursuant to the organizing documents of the registered clearing agency.

Notwithstanding the above, the Commission is modifying Rule 17Ad–25(c) in two ways: (a) the Commission is modifying paragraph (1) to add that the nominating committee shall also ''evaluate the independence of nominees and directors,'' in addition to evaluating nominees for serving as directors, and (b) the Commission is modifying paragraph (4)(iv) in two places to specify that the evaluation process applies to nominees as well as directors. Pursuant to the latter modification, the written evaluation process required by the rule shall identify whether each nominee ''or director'' would meet the definition of independent director and whether each ''such nominee or director'' has a known material relationship with the registered clearing agency (or an affiliate thereof).[103] These changes ensure that the final rule addresses the role of the nominating committee in evaluating directors which it did not itself nominate because their nominations came through different processes specified in the organizing documents of the registered clearing agency. Separately, the Commission is also modifying paragraph (4)(iii) to replace the term ''impacted'' with ''affected.'' This is a technical correction to avoid the use of informal language in the rule text.

Second, as previously discussed in Part II.A.3, one commenter stated that the concept of ''control'' as used in certain definitions in and requirements of Rule 17Ad–25, should be left to the determination of the nominating committee of the registered clearing agency, as long as the analysis is documented and auditable.[104] The Commission agrees and Rule 17Ad–25(c)(1) accordingly includes a requirement for a written evaluation process, so that the clearing agency has documentation as to its determinations of control.

Third, one commenter sought clarity as to whether the nominating committee can perform other functions.[105] Specifically, the commenter explained that a registered clearing agency might establish one committee that performs the entire function and role of the nominating committee but also consider other governance functions more broadly. Such an approach can be appropriate and consistent with the adopted rule. Rule 17Ad–25(c), as discussed above and modified, requires that the nominating committee evaluate each nominee for serving as a director and evaluate the independence of nominees and directors. A committee that performs these functions would satisfy the requirements of the rule, even if it also performed additional functions as specified in the organizing documents of the registered clearing agency. A registered clearing agency, however, generally should take account of the overall workload imposed on the nominating committee in the organizing documents and ensure that the nominating committee has sufficient time and resources to fulfill the functions required by Rule 17Ad–25(c), which include evaluating nominees and directors as explained above and establishing the fitness standards for serving on the board.

Fourth, one commenter asked whether the board could take on the functions of the nominating committee if it met all requirements applicable to the nominating committee.[106] Such an approach can be appropriate and consistent with the rule. Consistent with the requirements in Rule 17Ad–25(c)(2), such an approach would require that a majority of the directors serving on the board be independent directors—regardless of the ownership structure of the clearing agency—and that the chair of the board be an independent director.

3. Approach to Representation of Small and Medium-Sized Firms

In addition to comments discussed in Part II.A.4 regarding establishing a ''right of participation'' generally on the board by small and medium-sized participants of the registered clearing agency, commenters also expressed similar views specific to participation

[101] *See* Governance Proposing Release, *supra* note 2, at 51829 n.110 (providing the same example).

[102] *See infra* Part II.D (further discussing both a clearing agency's entity-wide obligations and a director's specific obligations relating to potential conflicts of interest and the evaluation of material relationships).

[103] *See* Rule 17Ad–25(b)(2) (requiring, among other things, that the registered clearing agency broadly consider all the relevant facts and circumstances on an ongoing basis to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency).

[104] LSEG at 4.

[105] DTCC at 5.

[106] ICE at 3.

on the nominating committee. Two commenters recommended that the Commission specifically authorize such a right of participation on the nominating committee.[107]

Exchange Act section 17A(b)(3)(C) directs the Commission to ensure the fair representation of owners and participants in the selection of directors and the administration of affairs. As previously discussed in Part II.A.4, it can be appropriate to apportion representation according to use of the clearing agency, even if an effect of this approach is to be disproportionate as to the number of small, medium, or large participants represented on the board relative to the total number of small, medium, or large participants that use the clearing agency. In addition, reducing the degree of proportionality of representation relative to use of the clearing agency could lead to negative externalities. For these same reasons, the Commission is not modifying the proposed rule to require a ''right of participation'' on the nominating committee specific to small and medium-sized participants.[108] In proposing Rule 17Ad–25(c), the Commission stated its belief that smaller participants and clients of participants generally should be represented on clearing agency boards and board committees, such that their views and perspectives are formally considered in board decisions that may impact them.[109] In particular, the Commission explained that the diverse perspectives and expertise that smaller participants and clients of participants can provide will help inform a clearing agency's operations and thereby improve the resilience of the registered clearing agency. Consistent with these views, board governance, and through it the risk management function of the clearing agency, benefits from diverse perspectives on risk management issues from across the range of stakeholders—owners, direct participants, and indirect participants—in a registered clearing agency. Accordingly, proposed Rules 17Ad–25(c)(4)(i), (ii), and (iii) require that clearing agencies take steps to facilitate diverse perspectives and expertise on the board, including a requirement in Rule 17Ad–25(c)(4)(ii) for the nominating committee to demonstrate that it has considered whether a particular nominee would complement the other board members, such that, if elected, the board of directors, taken as a whole, would represent—among other things—the range of different business strategies, models, and sizes across participants, as well as the range of customers and clients the participants serve. These requirements ensure that the nominating committee considers a diverse set of backgrounds, experience, and skills in selecting and evaluating nominees for the board.[110] In this regard, a registered clearing agency generally should provide in its governance arrangements that the nominating committee explicitly consider some nominees that represent the views of medium and small participants, but, in the Commission's view, it is appropriate to leave discretion to the clearing agency and its board to evaluate and select the appropriate mix of nominees and directors mindful of its organizational documents, markets served, and products cleared.

For the above reasons, the Commission is not modifying Rule 17Ad–25(c) in response to these comments.

4. Percent of Directors That Are Independent Directors

Some commenters expressed support for the proposed approach to require that the chair of the nominating committee be an independent director and that a majority of the directors serving on the nominating committee be independent directors.[111] One commenter recommended that the Commission modify the proposal to require that all directors serving on the nominating committee be independent directors.[112] The commenter stated that such an approach would help maintain the standard for director independence and improve the overall quality of nominees.

The Commission is not requiring all directors serving on the nominating committee be independent directors for two reasons. First, as a general matter, the proposal sought to ensure an approach to board governance that facilitates fair representation of both owners and participants in the selection of directors and the administration of a clearing agency's affairs.[113] The proposed approach is consistent with this requirement in part because it enables any individual director, whether independent or not, to serve on the nominating committee. Second, and mindful of the concern raised by the commenter, the proposed rule would require that a majority of the directors serving on the nominating committee be independent directors regardless of the ownership structure of the registered clearing agency.[114] A majority of independent directors and a chair of the nominating committee that is also an independent director is sufficient to ensure the thoughtful consideration, evaluation, and selection of nominees, particularly for nominees to serve as independent directors on the board of a registered clearing agency. Given the definition of ''independent director'' used in Rule 17Ad–25, modifying the rule further to require that *only* independent directors can serve on the nominating committee would not clearly improve the functioning of the nominating committee. Independent directors would already be a majority of the nominating committee when making determinations, and as such, directors intended to represent owners of the clearing agency cannot comprise a majority of the nominating committee without also obtaining support from independent directors as to particular decisions. Because clearing agencies perform a unique and often systemically important function that facilitates effective risk management in the U.S. securities markets, enabling a wide range of stakeholders in the registered clearing agency to serve on the nominating committee, including directors who are not independent directors, can provide expertise,

[107] Better Markets at 20 (recommending that the Commission mandate participation from smaller clearing members to guard against a board that finds diversity within the ''oligopoly of large dealers''); IDTA at 4 (recommending that the Commission be more prescriptive in requiring that certain types of stakeholders, such as ''not FSOC designated SIFIs'' be afforded a right to participate).

[108] *See supra* notes 76–78 and accompanying text (not modifying the rule to designate certain seats on the board for specific types of clearing agency participants or their customers).

[109] Governance Proposing Release, *supra* note 2, at 51829.

[110] *See infra* Part II.F (further discussing Rule 17Ad–25(j), which imposes an obligation on the board to formally consider stakeholder viewpoints, also helps ensure that the board is actively soliciting the views of those stakeholders who do not participate in the board directly so that the views of such stakeholders can be considered and incorporated into the board's risk management and operations).

[111] DTCC at 5; ISDA at 6; LSEG at 9; Saguato at 3; *see also* ICE at 3 (observing that, in its view, requiring written evaluations of nominees is unnecessary if the committee is also composed of a majority of independent directors).

[112] IDTA at 4.

[113] Governance Proposing Release, *supra* note 2 at 51818 (''Specifically, the Commission believes that addressing the composition of a board and its committees will help ensure effective governance, help promote transparency into decision-making processes, facilitate fair representation of owners and participants, and mitigate the potential effects of conflicts of interest between owners and participants, large and small participants, and direct and indirect participants.'').

[114] *See supra* Part II.A (further discussing Rule 17Ad–25(b), which sets the general requirement for the number of independent directors required to serve on the board based on the percentage of ownership held by participants in the registered clearing agency).

experience, and skills useful to the nominating committee's overall purpose.

*C. Risk Management Committee*

1. Proposed Rule 17Ad–25(d)

Proposed Rule 17Ad–25(d)(1) would require each registered clearing agency to establish a risk management committee (or committees) (''RMC'') to assist the board in overseeing the risk management of the registered clearing agency. Proposed Rule 17Ad–25(d)(1) would also require each RMC to reconstitute its membership on a regular basis and at all times include representatives from the owners and participants of the registered clearing agency. Proposed Rule 17Ad–25(d)(2) would require that the RMC, in the performance of its duties, be able to provide a risk-based, independent, and informed opinion on all matters presented to it for consideration in a manner that supports the safety and efficiency of the registered clearing agency.

In the Governance Proposing Release, the Commission explained that because all registered clearing agencies are currently covered clearing agencies and, as such, are required to have RMCs as a part of their governance arrangements under Rule 17Ad–22(e)(3)(iv),[115] no parallel requirement exists for registered clearing agencies that are subject to Rule 17Ad–22(d).[116] The Commission stated that because future registered clearing agencies that are not covered clearing agencies and, as a result, are subject to Rule 17Ad–22(d), will also likely face risk management issues related to their activities, any clearing agency subject to Rule 17Ad–22(d) will likely benefit from having a RMC.[117] Accordingly, the Commission proposed Rule 17Ad–25(d) so that clearing agencies subject to Rule 17Ad–22(d) will also be required to have RMCs as a part of their governance arrangements.[118] Additionally, the Commission stated that proposed Rule 17Ad–25(d) would establish more defined requirements related to the purpose and function of RMCs that Rule 17Ad–22(e)(3)(iv) does not and that specific requirements imposed by proposed Rule 17Ad–25(d) would help enhance risk management governance across all registered clearing agencies.[119]

In the Governance Proposing Release, the Commission also stated that it recognizes the importance of enabling the board to assign certain tasks to a board committee to assist the board in discharging its ultimate responsibility of ensuring the sound risk management of the clearing agency.[120] The Commission stated that for the RMC itself to be effective, it must have a clearly defined purpose and obligations to the board; therefore, the proposed rule would require the RMC to provide a risk-based, independent, and informed opinion on all matters presented to it in a way that supports the safety and efficiency of the registered clearing agency.[121]

Commenters generally supported the proposed approach to Rule 17Ad–25(d).[122] However, some commenters requested clarifications [123] or modifications to the rule.[124] Other commenters disagreed with certain aspects of the rule.[125] Proposed Rule 17Ad–25(d) balances more defined requirements with principles-based requirements relating to a registered clearing agency's RMC. In keeping with this approach and to address requests for clarifications and revisions to the rule, the Commission adopts Rule 17Ad–25(d) as proposed, with certain modifications. Specifically, Rule 17Ad–25(d)(1) has been modified to reflect that: (1) the RMC is ''of the board'' of the registered clearing agency; and (2) the RMC's membership must be ''re-evaluated annually.'' Additionally, Rule 17Ad–25(d)(2) has been modified to reflect that the RMC's work must support the ''overall risk management, safety and efficiency of the registered clearing agency.'' Rule 17Ad–25(d) establishes specific requirements as a minimum bar for RMCs across all registered clearing agencies while also providing registered clearing agencies with discretion to consider when and how to re-evaluate the RMC membership annually and regarding the choice of the RMC chair.

2. RMC of the Board

Many commenters had understood the proposed rule to require a board-level RMC, as the Commission had intended the rule to require, and supported the Commission's approach.[126] A commenter requested that the Commission clarify in a final rule that the board-level RMC is ''not merely an advisory body that only develops opinions or recommendations for full board consideration and action.'' [127] Another commenter stated that because risk management should be a critical focus of the RMC, the RMC should have adequate representation by clearing agency participants, and the proposed requirement would help formalize such a structure and foster further consistency across clearing agencies.[128]

Two commenters, however, objected to the Commission's approach that would require the RMC to be a board-level committee.[129] For example, one commenter stated that registered clearing agencies should be given the discretion to structure their RMCs as they see fit, whether as a board committee or an advisory group with a broader membership than the board and

[115] *See* 17 CFR 240.17Ad–22(e)(3)(iv); *see also* CCA Standards Adopting Release, *supra* note 4, at 70807–09 (discussing that, under Rule 17Ad–22(e)(3)(iv), a registered clearing agency's risk management framework must provide risk management personnel with a direct reporting line to, and oversight by, a RMC of the board of directors).

[116] *See* Governance Proposing Release, *supra* note 2, at 51831.

[117] *See id.*

[118] *See id.*

[119] *See id.*

[120] *See id.*

[121] *See id.*

[122] *See, e.g.,* SIFMA at 3 (stating that it ''supports this part of the rule and urges the Commission to adopt it . . .''); Barclays *et al.* at 2 (stating that ''[w]hile it is reassuring that all seven of the current clearing agencies include participant representatives on their RMCs, we believe that the codification of this practice into a requirement will be beneficial''); DTCC at 5 (stating that ''DTCC generally supports the requirements set forth in proposed Rule 17Ad–25(d) regarding the establishment and function of a board risk committee . . .''); ICI at 2 (stating that ''[w]hile RMCs currently exist at some clearing entities, the proposed requirements would promote greater consistency and a defined role for these committees.'').

[123] *See, e.g.,* DTCC at 5–6; OCC at 8–9.

[124] *See, e.g.,* SIFMA AMG at 4–6; Barclays et al. at 2.

[125] *See, e.g.,* OCC at 8–9 (stating that ''[a] requirement that forces a registered clearing agency to replace well-informed risk management experts with directors relatively unfamiliar with a particular matter or the broader risk management framework would rob the registered clearing agency of critical risk management continuity.''); CCP12 at 4–5 (stating that ''[w]hile we agree that it can be beneficial for a risk management committee to be a board committee . . . we do not support making this a requirement . . .''); ICE at 4 (stating that ''ICE supports the Commission's proposal to require a SEC Registered CA to establish a risk management committee but disagrees with the requirement that a risk management committee be a committee of the board.'').

[126] *See, e.g.,* LSEG at 10 (stating that ''this would be an effective way to structure the committee. As a board sub-committee, the RMC can be formally delegated certain authorities and would be subject to the same corporate governance regime of the company.''); Saguato at 4 (stating that ''[a] [c]learing agency should have one or more risk committee to support the board in its operation.'').

[127] DTCC at 6.

[128] *See* SIFMA at 3 (stating that ''the Commission's specific proposal in this regard will help formalize this structure and further foster consistent practices across such clearing agencies.'').

[129] *See* ICE at 4 (stating that it ''supports the Commission's proposal to require a SEC Registered CA to establish a risk management committee but disagrees with the requirement that a risk management committee be a committee of the board.''); CCP12 at 4 (stating that ''we do not support making this a requirement for all clearing agencies, as there are other models that clearing agencies use that are also effective.'').

with requisite expertise in risk management matters, stating it does not view that ''a board level risk management committee . . . improve[s] the board's engagement with clearing agency risk management, nor is there any evidence that it makes a board's oversight of management's decisions more effective.'' [130]

In response to commenters, the Commission is modifying Rule 17Ad–25(d)(1) to specify that the RMC is ''of the board'' to make clear that the RMC is not merely an advisory board. The Commission is modifying Rule 17Ad–25(d)(2) to specify that the RMC's work supports the ''overall risk management, safety and efficiency of the clearing agency.'' [131] The Commission disagrees with the commenter's suggestion that requiring registered clearing agencies to structure their RMCs as board-level committees would not make a board's oversight of management's decisions more effective. As stated in the Governance Proposing Release, a RMC of the board is a more effective way to help ensure that the board is engaged with and informed of the ongoing risk management of the clearing agency, because a dedicated committee of the board remains focused exclusively on matters related to risk management.[132] One reason that a board-level RMC is a more effective structure for the registered clearing agency's risk management decisions lies in the fact that such RMC is directly answerable to the board; requiring registered clearing agencies to establish a RMC of the board would help ensure that the board can more effectively oversee management's decisions concerning matters that implicate the clearing agency's risk management, including its policies, procedures, and tools for mitigating risk.[133] As one commenter stated, board-level RMCs of registered clearing agencies ''do not function in such a passive manner, but instead act pursuant to delegated authority from the full board to evaluate and take risk management decisions directly . . . . allowing for this balancing of roles and responsibilities between the two bodies [of the RMC and the board] enhances the clearing agency's ability to evaluate and respond in a timely manner to evolving risks and other changes in the relevant cleared market.'' [134] While the board may or may not take the recommendations of an advisory group, RMCs generally have delegated authority from the board to conduct oversight and make decisions regarding risk management, as most commenters have observed,[135] pursuant to a charter or other governing document specifying its purpose and its delegation of authority from the board. Notwithstanding the above, the requirement for a board-level RMC in no way precludes the establishment or use of an advisory committee composed of non-board members, as the commenter has suggested.[136]

In addition, Rule 17Ad–25(d) specifies that, in the performance of its duties, the RMC must be able to provide a risk-based, independent, and informed opinion on all matters presented to it in a manner that supports the overall risk management, safety and efficiency of the registered clearing agency. As discussed in the Governance Proposing Release,[137] this requirement helps ensure that the RMC has a clear scope and sufficient direction to effectively address risk management-related matters and not merely serve as a ''rubber stamp'' for recommendations presented to it by management.[138] In this sense, it is neither advisory in its review of management's decisions nor advisory in its recommendations provided to the board. As a general matter, based on its supervisory experience, the Commission has observed that the boards of registered clearing agencies often give considerable deference to the recommendations, advice, and opinions of their RMCs. The Commission continues to believe that it is appropriate for the board, while retaining ultimate responsibility over risk management, to assign certain tasks to the RMC (and other committees) to assist the board in discharging its ultimate responsibility.[139]

3. Annual Requirement To Re-Evaluate RMC Membership

Several commenters disagreed with the Commission's approach to require RMC membership reconstitution on a regular basis, as proposed in Rule 17Ad–25(d)(1), because doing so could remove individuals with useful subject matter expertise and institutional knowledge required for the RMC to be effective.[140] One commenter suggested alternative language for a different approach, requesting that the Commission modify the proposed rule to require the registered clearing agency to ''reevaluate'' the composition of the RMC rather than ''reconstitute,'' as proposed.[141] Some commenters proposed a staggered rotation system with term limits, as well as fitness standards.[142] Another alternative suggested by a commenter is to have the clearing agency use an outcomes-based approach to review the work of the RMC and prevent it from becoming non-representative or entrenched.[143] Another commenter suggested annual review of the membership is sufficient and also requested that the Commission clarify whether membership refers to

[130] ICE at 4 (also stating that ''[a] risk committee that is not board level can benefit from the expertise of a wider range of individuals and thus better inform the board than a board level risk committee would.'').

[131] To address the concern that the board can also benefit from input and expertise reflecting a broader set of potential stakeholders in the registered clearing agency, the Commission is separately adopting Rule 17Ad–25(j), as discussed in Part II.F, which requires a registered clearing agency to seek input from other relevant stakeholders, such as the customers of clearing agency participants, regarding its risk management and operations.

[132] *See* Governance Proposing Release, *supra* note 2, at 51831.

[133] *See id.*

[134] DTCC at 6.

[135] *See* LSEG at 10 (stating that ''. . . this would be an effective way to structure the committee. As a board sub-committee, the RMC can be formally delegated certain authorities . . .''); CCP12 at 5 (stating that ''[o]ur view is that board-level RMCs may be delegated authority by the board to proactively address certain aspects of risk management. This is in line with generally accepted corporate governance principles.'').

[136] *See* ICE at 4.

[137] *See* Governance Proposing Release, *supra* note 2, at 51831.

[138] *See id.*

[139] *See id.*

[140] *See, e.g.,* OCC at 8 (stating that ''[w]e believe a forced reconstitution on a regular basis would frustrate the Commission's goal . . . as registered clearing agencies may be required to remove directors from the risk management committee(s) with deep industry and subject matter experience to meet this requirement.''); ISDA at 3–4 (stating that ''a situation where the CCP spends a considerable part of RMC meetings on educating new RMC members should be avoided.''); CCP12 at 6 (stating that ''RMC members often serve because they have specialized expertise or a familiarity with the intricacies of a clearing agency's risk management framework that would merit a longer term.''); ICE at 4–5 (stating that ''reconstitution requirements must consider the value an experienced and knowledgeable risk management committee member provides to a clearing agencies' risk management function.'').

[141] *See* DTCC at 6 (stating that ''[i]nstead, we would suggest that that the Commission consider alternative terms such as 'reevaluate' '').

[142] *See, e.g.,* ISDA at 3–4 (stating that ''staggered rotation system . . . allows to have new members on while still retaining institutional knowledge.''); SIFMA AMG at 5–6 (stating that ''[i]t will be important that the requirement is principles-based, is subject to the requirement for the inclusion of clearing members and clearing member customers, applies the recommended fitness standards, and requires a staggered rotation . . .'').

[143] *See* DTCC at 6 (requesting that the Commission consider registered clearing agencies to ''periodically evaluate whether the risk committee membership and structure continues to provide current, diverse and expert risk management oversight that supports the safety and efficiency of the clearing agency'').

participant firms or individuals representing them.[144]

The Commission is modifying Rule 17Ad–25(d)(1) to require an annual re-evaluation of the RMC. Having considered the comments received, the Commission agrees that a required reconstitution of the RMC on a regular basis could lead to the undesired outcome of turnover in the committee membership before members are able to contribute optimally, with a loss of continuity and expertise. In this way, the modification to Rule 17Ad–25(d)(1) reflects an outcomes-based approach. As registered clearing agencies may have different methods of term limits, including staggered rotation, the Commission leaves the frequency and type of reconstitution to the discretion of the registered clearing agency, while at the same time requiring a re-evaluation to be conducted annually. Rule 17Ad–25(d), as modified, will preserve the initial intent of the rule—to prevent stagnation of the RMC membership, while also allowing registered clearing agencies flexibility and discretion in the composition of the RMC. As stated in the Governance Proposing Release, many registered clearing agencies have established policies and procedures for governance arrangements that help promote participation from a broader array of owners and participants on the RMC through the use of RMC membership changes.[145] The Commission continues to believe that codifying this practice will set a minimum standard for re-evaluation of the RMC membership.[146] Requiring the registered clearing agency to re-evaluate the RMC membership annually helps ensure that a broad range of owners and participants will be able to provide their risk management expertise and participate in the decision-making of the RMC over time.[147] As stated in the Governance Proposing Release, the Commission continues to believe that Rule 17Ad–25(d)(1) achieves the above objective of ensuring a broad range of participation on the RMC without imposing specific obligations related to owners, participants, or independent directors that may be suitable in some, but not necessarily all, cases, and because the RMC is broadly responsible for providing recommendations to the board on all risk management related matters, it is important that the RMC's membership reflects a wide range of owners and participants with relevant experience and expertise on a variety of risk management issues.[148] By requiring the RMC to re-evaluate its membership annually, Rule 17Ad–25(d)(1), as modified, helps ensure ongoing diversity of perspectives across owners and participants and expertise on the RMC, while better ensuring that the RMC is not subject to stagnation of views that neither serves the safety and efficiency of the registered clearing agency in its risk management decision-making nor promotes effective and reliable risk management practices at a registered clearing agency.[149] As stated in the Governance Proposing Release, the charter that defines the terms of the RMC could also establish that RMC members serve for a specified term, or that the RMC would rotate or replace directors on the RMC at certain intervals absent a specified turnover threshold among directors, or that their terms could be staggered to have regular turnover of participants and other RMC members.[150]

Although some commenters recommend against the Commission requiring a certain percentage or number of small participant representatives on the RMC,[151] a few commenters requested substantive modifications to the rule that would address RMC composition requirements.[152] One commenter suggested requiring directors serving on the RMC be individuals selected from smaller clearing agency participants,[153] although another commenter stated that obtaining a broad range of perspectives is not necessary.[154] This commenter suggested that the Commission go further and that the RMC of the board ''should be structured to represent more participants than the board . . . [and] neither clearing members or clients of clearing members should represent a majority.'' [155] One commenter suggested that ''a majority of the [RMC] should be composed of independent directors,'' and that ''a dual-level [RMC] structure would be theoretically ideal.'' [156] With regard to this comment, requiring a board-level RMC pursuant to Rule 17Ad–25(d) in conjunction with requiring the registered clearing agency to solicit and document stakeholder viewpoints pursuant to Rule 17Ad–25(j) is fully consistent with the commenter's recommendation of a ''dual-level'' structure, in which the board-level RMC acts with delegated authority from the board on risk management issues while the registered clearing agency is required to solicit stakeholder views from representatives of clearing agency participants, their customers, other end users, and any other relevant stakeholders.[157] Another commenter requested clarification from the Commission on RMC composition requirements and the reference to ''independent'' opinion in Rule 17Ad–25(d)(2).[158]

With regard to other comments on specifying RMC membership composition, the Commission is not modifying Rule 17Ad–25(d) to require that the RMC be composed of majority independent directors because such requirement may exclude too many directors with specialized technical expertise from the pool of directors eligible to serve on the RMC, as previously considered and discussed in the Governance Proposing Release.[159] However, pursuant to the requirements

[144] *See* LSEG at 12 (stating that ''it should be sufficient for a clearing agency to regularly (*e.g.,* annually) review the membership of its RMC to ensure there is sufficient representation of its participants.'').

[145] *See* Governance Proposing Release, *supra* note 2, at 51832–33.

[146] *See id.*

[147] *See id.*

[148] *See id.*

[149] *See id.*

[150] *See* Governance Proposing Release, *supra* note 2, at 51833.

[151] *See, e.g.,* CCP12 at 5 (stating that ''additional requirements may make the governance of RMCs more burdensome and inefficient, which could potentially have a negative impact on the functioning of the committee.''); ICE at 5 (advising ''against mandating specific risk management committee composition requirements, such as a specific percentage or number of representatives from small participants.'').

[152] *See, e.g.,* Better Markets at 21 (stating that ''diversity needs to be genuine and can only be strengthened by guaranteeing enough representation for smaller entities to check the largest players.''); IDTA at 4–5 (recommending that ''that the rule include a requirement to ensure sufficient representation on the risk committees of non-SIFI entities (smaller and middle-market firms).'').

[153] *See* IDTA at 5.

[154] *See* LSEG at 11 (stating that ''[w]e do not believe that small participants should be systematically represented since very small participants may not have this expertise, nor the required involvement'').

[155] LSEG at 10.

[156] Saguato at 4 (stating that ''[i]n actuality a dual level risk committee structure would be theoretically ideal as it would better incorporate inputs from the many constituencies of a clearing agency'').

[157] *See infra* Part II.F (further discussing the requirements of Rule 17Ad–25(j)).

[158] *See* OCC at 9 (requesting the Commission ''clarify that one representative from each of the owners and the participants of the registered clearing agency would satisfy the requirement of Proposed Rule 17Ad–25(d)(1) . . . . [and] that a risk management committee(s) may provide such an independent opinion so long as a majority of participating directors on the committee(s) are themselves independent.'').

[159] *See, e.g.,* Governance Proposing Release, *supra* note 2, at 51831; *see also id.* at 58132 (''Because the risks a clearing agency faces will vary depending on the products it clears and the markets it serves, the Commission believes that a clearing agency should have discretion to determine the appropriate qualifications and expertise needed for the risk management committee to provide an informed opinion.'').

of Rule 17Ad–25(e), if the RMC has the authority to act on behalf of the board of directors, the composition of that committee must have at least the same percentage of independent directors as is required for the board of directors. The Commission continues to believe that, by requiring the RMC to provide an independent opinion, *irrespective of its composition,* Rule 17Ad–25(d) helps ensure that the RMC is free from influence in the performance of its duties.[160] In response to commenters' request to clarify the reference to ''independent'' opinion, ''independent'' here refers to the nature of the opinion and does not mean independent in the same context as the requirements discussed in Part II.A for ''independent'' directors; when making recommendations to the board, the RMC's decisions or opinions must be its own—not a rubber stamp of management's decisions or opinions—so that the RMC is free from influence in the performance of its duties to reflect how its decisions support the safety and efficiency of the clearing agency and represent the best interests of the clearing agency.[161] The requirement to include directors on the committee representative of both owners and participants, without also providing further specificity as to the size (or market power) of the participants so included, is consistent with the requirements set forth in Rule 17Ad–25(c)(4) regarding the nomination of directors by the nominating committee more generally. Specifically, those requirements establish that the nominating committee shall consider, when selecting nominees for director, representation on the board as a whole that reflects a range of participants with different business strategies, models, and sizes, as further discussed in Part II.B.3.

The Governance Proposing Release also stated that clearing agencies will benefit from the diverse perspectives and expertise that representatives from owners and participants can provide, which enhances the effectiveness of their risk management practices, and so Rule 17Ad–25(d) requires that RMCs at all times include representatives from the owners and participants of the registered clearing agency.[162] As discussed in the Governance Proposing Release, these representatives would be persons who have a relationship with the clearing agency's owners and participants, such as employees of the owners and participants or those who have an ownership interest in the owners and participants.[163] Based on its supervisory experience, the Commission continues to believe that, because representatives from a clearing agency's owners and participants will likely have an understanding of the clearing agency's operations and procedures, as well as the complex risk management issues that the clearing agency's board must consider, requiring the RMC to include representatives from the clearing agency's owners and participants helps ensure that the RMC's recommendations to the board reflect these stakeholders' unique perspectives and expertise on risk management issues.[164]

Accordingly, the rule provides a registered clearing agency with some discretion to determine the appropriate composition for the RMC with respect to representation from its owners and participants. The RMC generally should include representation reflective of both small and large participants, and the affirmative Commission requirements reflected in the selection process for directors generally under Rule 17Ad–25(c) would better ensure appropriate representation of a diverse set of stakeholder viewpoints.[165] Therefore, the Commission is not modifying the proposed rule in response to these commenters.

4. Harmonization With CFTC and EMIR Requirements

Some commenters recommended that the Commission harmonize Rule 17Ad–25(d) with CFTC requirements for the RMCs of DCOs,[166] particularly for entities dually registered as DCOs with the CFTC and registered clearing agencies with the Commission.[167] Specifically, some commenters suggested the Commission clarify the expected perspective to be applied by RMC members to support not just the safety and efficiency of the clearing agency, as required in Rule 17Ad–25(d)(2), but also the stability of the broader financial system.[168]

The Commission is adopting the proposed rule without modification because the goal of safety and efficiency of the clearing agency is not mutually exclusive with that of overall financial stability. As stated in the Governance Proposing Release, in providing risk-based opinions, the RMC must focus on both the risks that the clearing agency faces and the tools at its disposal to mitigate and address such risks in its aim toward the goal of supporting the safety and efficiency of the clearing agency itself.[169] The stability of clearing agencies is an essential part of the stability of the overall financial system and the markets that clearing agencies serve.[170] Therefore, the Commission is not modifying Rule 17Ad–25(d)(2) as suggested by commenters.

Additionally, one commenter requested that the Commission adopt the list of factors specified in CFTC requirements for DCO RMCs by explicitly requiring a registered clearing

[160] *See id.* at 51831 (emphasis added).

[161] *See id.*

[162] *See id.*

[163] *See id.*

[164] *See id.*

[165] *See id.*

[166] *See* 17 CFR part 39; *see also* CFTC Final Rule: Governance Requirements for Derivatives Clearing Organizations, 88 FR 44675 (July 13, 2023) (CFTC adopting amendments to its rules to require DCOs to establish and consult with one or more RMCs composed of clearing members and customers of clearing members on matters that could materially affect the DCO's risk profile, minimum requirements for RMC composition and rotation, and requiring DCOs to establish and enforce fitness standards for RMC members; also adopting requirements for DCOs to maintain written policies and procedures governing the RMC consultation process and the role of RMC members; also adopting requirements for DCOs to establish one or more market participant risk advisory working groups (RWGs) that must convene at least two times per year, and adopt written policies and procedures related to the formation and role of the RWG).

[167] *See, e.g.,* ICI at 5 (stating that ''[h]armonization would promote consistency, certainty, and efficiency in how clearing entities—especially CFTC and SEC dual-registrants—manage risk by detailing the process by which the board consults and obtains an RMC's input.''); CCP12 at 6 (encouraging the Commission and the CFTC ''to coordinate . . . . [by] adopt[ing] a flexible outcomes-based approach in which the clearing agency would periodically evaluate whether the RMC membership is appropriately expert, diverse and current in terms of tenure.''); ICE at 5 (urging ''coordination and harmonization'').

[168] *See* Barclays et al. at 2 (recommending ''[o]ne approach to addressing this conflict would be to require RMC members to also consider the safety and efficiency of the broader financial markets, rather than solely the registered clearing agency.''); SIFMA AMG at 5 (recommending the Commission ''explicitly state that in addition to supporting the safety and efficiency of the RCA, RMC and RWG members should also support the stability of the broader financial system''); *see also* 17 CFR 39.24(c)(1)(iv)(3) (''A derivatives clearing organization shall maintain policies designed to enable members of risk management committee(s) to provide informed opinions in the form of risk-based input on all matters presented to the risk management committee for consideration, and perform their duties in a manner that supports the safety and efficiency of the derivatives clearing organization and the stability of the broader financial system.'').

[169] *See* Governance Proposing Release, *supra* note 2, at 51831.

[170] *See* Committee on Payment and Settlement Systems (''CPSS'') and Technical Committee of the International Organization of Securities Commissions (''IOSCO''), *Principles for financial market infrastructures* (Apr. 16, 2012), at 5, available at *http://www.bis.org/publ/cpss101a.pdf* (''PFMI'') (stating that ''[f]inancial market infrastructures that facilitate the clearing, settlement, and recording of monetary and other financial transactions can strengthen the markets they serve and play a critical role in fostering financial stability.''). In 2014, the CPSS became the Committee on Payments and Market Infrastructures (''CPMI'').

agency to present to the RMC and any advisory committee or RWG all matters regarding, and proposed changes to, the registered clearing agency's rules, procedures, or operations that could materially affect the risk profile of the registered clearing agency, including, but not limited to, any material change to the registered clearing agency's risk model, default procedures, participation requirements, and risk management practices, as well as the clearing of new products that could significantly impact the clearing agency's risk profile.[171] According to the commenter, ''the greater detail we have recommended is important to ensure the requirements are clear, that the views of clearing member customers are included, that the board must engage with the RMC, and that issues of material risk must be brought to the RMC and RWG for consideration.'' [172] Additionally, another commenter suggested that ''the requirements for the function, composition, and reconstitution should specifically include considerations of concentration of risk in the markets, competitiveness of the markets, and the impact of policies on competitiveness.'' [173] However, one commenter stated that listing factors for RMC consideration would be overly prescriptive,[174] while another commenter stated that listing all matters for RMC consideration would be difficult.[175]

The Commission is not modifying the proposed rule by adopting the CFTC DCO list of factors for RMC consideration into Rule 17Ad–25(d). In the Governance Proposing Release, the Commission explained that the purpose of the RMC is to ''provide risk-based, independent, and informed opinion on all matters presented to it for consideration in a manner that supports the safety and efficiency of the registered clearing agency''—matters that implicate the clearing agency's risk management, including its policies, procedures, and tools for mitigating risk.[176] The Commission further stated that Rule 17Ad–25(d) ''helps ensure that the committee has a clear scope and sufficient direction to more effectively address risk management related matters, regardless of the participants, markets, and products that a clearing agency serves.'' [177] Explicitly enumerating the matters presented to the RMC, as suggested by commenters, would be unnecessarily prescriptive, and that the individual clearing agencies are best qualified to determine the matters presented to the board based on the specifics of their participants, markets and products. Additionally, whereas the CFTC considers DCO policies and procedures under a self-certification process, the SEC requires that registered clearing agencies submit to the Commission for approval, after a public comment period, certain policies and procedures—including policies and procedures related to the level of risks faced by the registered clearing agency—under the SRO rule filing process for registered clearing agencies, except for certain rule changes that are immediately effective upon filing as set forth in Exchange Act section 19(b)(3)(A) [178] and 17 CFR 240.19b–4(f).[179] Not only are the financial risk management matters referred to by the commenters subject to the SRO rule filing process, registered clearing agencies designated as systemically important financial market utilities (''SIFMUs'') are required to file 60-days advance notice of changes to rules, procedures, and operations that could materially affect the nature or level of risk presented by the SIFMU.

In a similar vein, a commenter suggested that the Commission assess how greater predictability and transparency can be provided to market participants regarding margin methodologies as part of a clearing agency's governance process to assist market participants in managing their liquidity needs and minimize the risk of market disruptions.[180] The Commission agrees that predictability and transparency of margin requirements can help clearing members better manage their liquidity and other market risks. The focus of this rulemaking regarding transparency is to ''increase transparency into board governance,'' rather than into the specific margin methodologies. In fact, improved governance could generally lead to more transparent margin methodologies. Accordingly, the Commission is not modifying the rule in response to this comment.[181]

One commenter urged the Commission to harmonize Rule 17Ad–25(d) with EMIR, which requires that an RMC be chaired by an independent director.[182] Another commenter requested clarification that a risk committee with some non-independent members can still provide overall independent opinions to the board.[183] The Commission is not modifying the rule as suggested by commenters. Rule 17Ad–25(d)(2) requires that the RMC ''be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration.'' This opinion on risk matters brought before the RMC can be independent without an explicit prescriptive requirement that the RMC is chaired by an independent director.[184] The rule's focus is on RMC decisions and opinions being free of influence from management by virtue of being a board-level committee, not the chair's independence in the context of the requirements in Rule 17Ad–25(b), because at the heart of the rule is the safety and efficiency of the registered clearing agency, and critical to the effective functioning of a registered clearing agency is the board's ability to understand and engage with the risks that a registered clearing agency faces and the risk management practices it employs to mitigate those risks.[185] With respect to registered clearing agencies, it

[171] *See* SIFMA AMG at 5–7 (requesting the Commission ''explicitly require that the RCA [registered clearing agency] present to the RMC and RWG all matters and proposed changes to the RCA's rules, procedures, or operations that could materially affect the risk profile of the RCA, including, but not limited to, any material change to the RCA's risk model, default procedures, participation requirements, and risk management practices, as well as the clearing of new products that could significantly impact the RCA's risk profile'').

[172] *See id.*

[173] IDTA at 4–5.

[174] *See* LSEG at 11 (stating that ''[i]t is not necessary for the SEC to define the matters to be presented to the RMC and be overly prescriptive. Requiring that clearing agencies are explicit in the committee Terms of Reference ('TOR') would meet the SEC's objective . . .'').

[175] *See* ISDA at 4 (stating that ''[i]t will be difficult to clearly specify in detail all matters that have to be presented to the RMC.'').

[176] *See* Governance Proposing Release, *supra* note 2, at 51831 (stating that ''[t]he proposed rule is intended to specify the role of the risk management committee by stating the committee's purpose—namely, to provide a risk-based, independent, and informed opinion on all matters presented to it in a way that supports the safety and efficiency of the registered clearing agency.'').

[177] *Id.*

[178] 15 U.S.C. 78s(b)(3)(A).

[179] *See* 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

[180] *See* Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel (Oct. 7, 2022) (''Citadel'') at 1.

[181] *See* Governance Proposing Release, *supra* note 2, at 51812 (stating that ''[t]he proposed rules would identify certain responsibilities of the board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency'').

[182] *See* LSEG at 10 (stating that ''independent directors are required under EMIR, hence LCH SA does not rely solely on experts from the participants and owners of the clearing agency. The INEDs selected for the Risk Management Committee ('RMC') must have good risk knowledge, and we support the RMC being chaired by an INED.'').

[183] *See* OCC at 9 (requesting clarification that an RMC ''may provide such an independent opinion so long as a majority of participating directors on the committee(s) are themselves independent.'').

[184] *See* Governance Proposing Release, *supra* note 2, at 51831 (stating that ''the proposed rule helps ensure that the committee is free from influence in the performance of its duties.'').

[185] *See id.*

is critically important that the chair of the RMC, which generally sets the agenda for and prioritizes the work of the RMC, has a high level of expertise in, and familiarity with, the risk management topics likely to come before the RMC for its review and opinion. In this regard, the expertise required to chair the RMC of a registered clearing agency to ensure that the RMC provides risk-based, independent, and informed opinions for the proper functioning and effectiveness of the RMC is more important than requiring that the chair of the RMC be independent subject to the requirements of Rules 17Ad–25(b), (e), and (f) because clearing agencies perform a unique and often systemically important function that facilitates effective risk management in the U.S. securities markets.[186] As stated in the Governance Proposing Release, by requiring the RMC to provide an independent opinion, ''irrespective of its composition,'' the rule would help ensure that the RMC is free from influence in the performance of its duties.[187]

One commenter stated that the RMC composition requirements in Rule 17Ad–25(d) conflict with the composition requirements for the RMC set forth in EMIR.[188] Contrary to the commenter's view, Rule 17Ad–25(d) can be read consistently with EMIR. Article 28 of EMIR states, ''A CCP shall establish a risk committee, which shall be composed of representatives of its clearing members, independent members of the board and representatives of its clients.'' It further states that, ''The advice of the risk committee shall be independent of any direct influence by the management of the CCP.'' [189] By comparison, Rule 17Ad–25(d) requires that the RMC be a board-level committee and that it at all times include representatives from the owners and participants of the registered clearing agency. The commenter indicated that ''owners are not permitted to be on the RMC under EMIR,'' but Article 28 of EMIR as described here suggests that only management is barred from direct representation on the RMC.[190] Even if the commenter is correct that owners are not permitted to be on the RMC under EMIR, Rule 17Ad–25(d) does not require that management serve on the RMC; nor does it require that owners serve as directors on the RMC. Rather, Rule 17Ad–25(d) requires that the composition of the RMC include *representatives of* owners (and participants). A non-independent director may serve as a representative of owners without being part of management or an owner of the clearing agency; for example, such a director could be non-management and a non-owner who nonetheless maintains a material relationship with the registered clearing agency, or that falls within a specific exclusion set forth in Rule 17Ad–25(f). For this reason, the Commission is not modifying Rule 17Ad–25(d) to address the comment. Nonetheless, to the extent that a registered clearing agency identifies facts or circumstances that clearly demonstrate a requirement under Rule 17Ad–25 is in direct conflict with a requirement of EMIR, the Commission has previously provided guidance as to how such a registered clearing agency can request an exemption from said requirement.[191]

5. Other Comments

One commenter requested that Rule 17Ad–25(d) include an explicit provision that allows directors on the RMC to obtain feedback from experts within their ''member firms,'' to enhance the quality of input the registered clearing agencies receive from directors on the committee.[192] As a general matter, directors on the RMC should be fully qualified to serve without having to rely on expertise from others, such as other personnel at their employer firm (*i.e.,* a clearing agency participant), to provide input on risk management decisions before the RMC. The more appropriate venue for providing the input described by the commenter is via the structure established in Rule 17Ad–25(j), as discussed in Part II.F, pursuant to which a relevant stakeholder would provide such input in response to solicitations of stakeholder viewpoints by the registered clearing agency. Ultimately, the ability of directors to consult with their primary employers on risk management matters will be governed by the specific governing documents of the clearing agency, its board, and any obligations as to confidentiality or information sharing that the registered clearing agency imposes through those documents on directors. Accordingly, the Commission is not modifying Rule 17Ad–25(d) to specifically permit directors on the RMC to consult with a clearing agency participant.

Additionally, one commenter requested that Rule 17Ad–25(d) go further by detailing additional RMC requirements, including requirements that: (1) registered clearing agencies create and maintain minutes or other documentation of RMC meetings that should be made available to the Commission and a summary of which that is made public; (2) the RMC document and share with regulators any dissenting RMC views with regard to the clearing agency's material risk decisions or the clearing agency not following the advice of the RMC, as well as the accompanying rationale for not accommodating dissenting views; and (3) the RMC meet on a regular basis and at least quarterly.[193] The Commission is not modifying Rule 17Ad–25(d) as suggested by the commenter in recognition that each entity has particular policies and needs, and that there could be different ways to accomplish the rule's objectives. The Commission designed Rule 17Ad–25(d) to balance establishing a common set of minimum standards on RMCs across registered clearing agencies while still providing registered clearing agencies with discretion to design the RMC to be most effective at conducting its risk management function. The Commission believes that registered clearing agencies currently are capable of determining how to apply these factors for the operation of their respective RMCs, and will continue to consider whether the Commission's objectives are being met and whether further rulemaking in this area is appropriate.

[186] *Cf.* Governance Proposing Release, *supra* note 2, at 51830–31.

[187] *See id.* at 51831.

[188] *See* LSEG at 11 (stating that ''it is important that members of the RMC have necessary levels of expertise to make effective risk decisions and provide sound advice. Further, owners are not permitted to be on the RMC under EMIR, which will create a conflict for dually registered clearing agencies.'').

[189] *See* EMIR, *supra* note 56.

[190] EMIR Article 28(1) provides: ''A CCP shall establish a risk committee, which shall be composed of representatives of its clearing members, independent members of the board and representatives of its clients . . . The advice of the risk committee shall be independent of any direct influence by the management of the CCP. None of the groups of representatives shall have a majority in the risk committee.''

[191] *See* Release No. 34–90492 (Nov. 23, 2020), 85 FR 76635 (Nov. 30, 2020) (''CCP Statement''). In the CCP Statement, the Commission explained (i) that it would take substantially the same approach for other jurisdictions that have adopted a regulatory framework substantially similar to EMIR, and (ii) that the policy and guidance provided also would apply to CCPs for securities products other than security-based swaps. *See id.* at nn.1 & 23.

[192] *See* Barclays et al. at 3 (stating that ''[w]e believe that the proposed rules should include explicit provisions that allow RMC members to obtain feedback from experts within their member firms which will enhance the quality of input the registered clearing agencies receive from RMC members'').

[193] *See* ISDA at 4.

*D. Conflicts of Interest*

1. Proposed Rules 17Ad–25(g) and (h)

Proposed Rule 17Ad–25(g) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify and document existing or potential conflicts of interest in the decision-making process of the clearing agency involving directors or senior managers of the registered clearing agency; and mitigate or eliminate and document the mitigation or elimination of such conflicts of interest. Additionally, proposed Rule 17Ad–25(h) would require registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.

In the Governance Proposing Release, the Commission explained that proposed Rules 17Ad–25(g) and (h) help promote the integrity of governance arrangements of registered clearing agencies by helping ensure that a registered clearing agency is capable of both identifying potential conflicts when they arise and subjecting conflicts to a transparent and uniform process of review, mitigation or elimination, and documentation.[194] The proposed rules would help ensure that potential conflicts of interest are identified and documented, that policies and procedures for their management have been established ex ante to help ensure a consistent approach over time, and that cases are subject to established processes for review and mitigation or elimination.[195] By requiring the registered clearing agency to identify and document both existing and potential conflicts of interest involving directors or senior managers of the registered clearing agency, proposed Rule 17Ad–25(g) was intended to address the conflicts of interests of directors and senior managers that could undermine the decision-making process within a registered clearing agency or interfere with fair representation and equitable treatment of clearing members or other market participants by a registered clearing agency.[196] The Commission stated that the ability to identify potential conflicts of interest is critical to ensuring the effective identification and management of actual conflicts of interest.[197] In the Governance Proposing Release, the Commission specifically explained that a clearing agency must be able to spot close cases, where another director, manager, employee, or observer might perceive a conflict of interest, in order to more effectively manage actual conflicts and help ensure the integrity of decisions made in the governance of the clearing agency.[198]

With regard to proposed Rule 17Ad–25(h), the Commission explained in the Governance Proposing Release that because a registered clearing agency may not have access to information necessary to identify a potential conflict of interest, the proposed rule would also require a registered clearing agency to have policies and procedures that require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.[199] The Commission explained that it is requiring policies and procedures that focus on any relationship or interest that reasonably could affect the independent judgment or decision-making of the director, rather than material relationships or interests, so that the registered clearing agency—not the party with a reporting obligation—can determine whether a relationship or interest is subject to mitigation or elimination under the conflicts of interest policy.[200] The Commission stated that this approach would help ensure that the registered clearing agency has sufficient information to investigate, identify and address potential conflicts.[201]

Commenters generally supported proposed Rules 17Ad–25(g) and (h),[202] notably the principles-based approach to the rules.[203] Two commenters urged the Commission to consider modifications to the rules.[204]

1. Mitigation or Elimination of Conflicts

While generally supportive of the proposed rules, one commenter urged the Commission to strengthen the rule, stating that proposed Rule 17Ad–25(g) is vague on exactly how a registered clearing agency should ''mitigate or eliminate'' conflicts.[205] The commenter suggested that the proposed rule should instead specify that agency policies should require recusal unless or until a conflict has been fully eliminated.[206]

The Commission is not modifying Rule 17Ad–25(g) in the ways suggested by the commenter. The Commission disagrees that ''mitigate or eliminate'' conflicts is vague and therefore, should be replaced by an outright requirement to recuse. As stated in the Governance Proposing Release, the registered clearing agency is best positioned to identify and address conflicts of interest that may arise in its operations and risk management and decision-making.[207] Specifically, given the array of potential conflicts of interest scenarios that a registered clearing agency may need to address, the registered clearing agency is best positioned through reasonable policies and procedures to mitigate—namely, reduce the harm—or eliminate these conflicts of interest so that such conflicts do not undermine the integrity of decisions made in the governance of the clearing agency.[208] This rule is principles-based to provide flexibility, for example, to dictate the disposition or resolution of private interests that may be unworkable or discourage qualified, experienced individuals from performing their duties to the registered clearing agency. Therefore, the rule focuses on the process to identify and

[194] Governance Proposing Release, *supra* note 2, at 51834.

[195] *Id.*

[196] *Id.*

[197] *Id.*

[198] *Id.*

[199] *Id.* at 51835.

[200] *Id.*

[201] *Id.*

[202] *See, e.g.,* Better Markets at 22 (stating that ''[w]e commend the Proposal for requiring written policies to identify, document, disclose, and mitigate conflicts of interest''); DTCC at 3–4 (stating that it ''generally finds that the requirements laid out in proposed Rules 17Ad–25(g) and (h) regarding conflicts of interest also are appropriately designed, and therefore recommends that they be adopted without further modification''); Chris Barnard at 2 (stating that ''[p]roposed Rule 17Ad–25(g) . . . I agree with this. . . . I also agree with proposed Rule 17Ad–25(h)''); ICE at 5 (stating that it ''welcomes such approach and believes it would provide SEC Registered CAs with the flexibility necessary for effective governance by allowing such clearing agencies the discretion to design policies that fit their particular structure and characteristics''); LSEG at 13 (stating that ''[t]he clearing agency should have policies and procedures in place to address conflicts of interest. . . . [and] should leverage the conflicts identified by the SEC to build its own policy''); IDTA at 5 (stating that ''[r]equiring clearing agencies to adopt policies and procedures with respect to the management of conflicts is instrumental to maintaining a sound regulatory framework'').

[203] *See* DTCC at 3–4; ICE at 5; LSEG at 13.

[204] *See, e.g.,* Better Markets at 22; IDTA at 5.

[205] *See* Better Markets at 22 (stating that ''[f]irst, the Proposal is vague on exactly how a clearing agency should 'mitigate or eliminate' conflicts. It should instead specify that agency policies should require recusal unless or until a conflict has been fully eliminated. Second, the . . . double layer of reasonableness review seems unnecessary and likely to be too generous towards clearing agencies and their boards. The Proposal should instead require clearing agencies to affirmatively oblige directors to disclose any material relationships'').

[206] *See id.*

[207] Governance Proposing Release, *supra* note 2, at 51834.

[208] *See id.*

document existing or potential conflicts of interest in the clearing agency decision-making involving directors or senior managers. Mitigation of the harm of such conflicts may include raising awareness of the circumstances in which conflicts can arise for the purpose of preventing conflicts of interest and providing training on how to identify and report such conflicts. In the Governance Proposing Release, the Commission explained that in some cases a conflicts of interest policy may simply require that a director or senior manager recuse herself from a particular decision to mitigate or eliminate the conflict of interest;[209] whether recusal is necessary depends on the conflict at hand. The Commission emphasizes that pursuant to the overarching obligation of this rule, elimination of conflicts of interest is one method of addressing the conflict. Depending on the circumstances, it may be appropriate to mitigate a conflict through other methods.[210]

Additionally, another commenter encouraged the Commission to have the rules consider the impact on institutions that are not designated systemically important financial institutions (''SIFIs'') by the Financial Stability Oversight Council (''FSOC''), as small and middle-market participants would be able to provide ongoing feedback on how policies are impacting the markets to minimize conflicts of interest and ensure competition among institutions of all sizes.[211]

The Commission is not modifying Rule 17Ad–25(d) in response to the comment. Because the types and sizes of participants vary significantly across different registered clearing agencies depending on the markets they serve, registered clearing agencies could determine the impact on non-SIFIs by requiring the consideration of viewpoints of small participants and a range of participants pursuant to Rule 17Ad–25(j). The Commission understands the overarching concerns that the commenter highlights about the need to have a process to include a wider array of stakeholder viewpoints in the registered clearing agency's decision-making. In this regard, Rules 17Ad–25(c) and (j) (rather than Rules 17Ad–25(g) and (h)) are designed to address concerns about a process to include stakeholder viewpoints in the registered clearing agency's decision-making, including the context that the commenter describes.[212]

2. Use of ''Reasonably Designed'' Policies and Procedures Approach

Some commenters supported the principles-based approach of proposed Rules 17Ad–25(g) and (h).[213] However, one commenter found the language of proposed Rule 17Ad–25(h) ''unnecessary and likely . . . too generous towards clearing agencies and their boards,'' specifically, the ''double layer of reasonableness review'' that the clearing agency must have policies ''reasonably designed'' to prompt disclosure of relationships that ''reasonably could affect the independent judgment of . . . the director.''[214] The commenter suggests that the rule ''should instead require clearing agencies to affirmatively oblige directors to disclose any material relationships.''[215]

The Commission agrees with the commenter that disclosure of material relationships is an important consideration, but the overall structure of the rule already requires evaluation of certain relationships of a director from an objective perspective, and that additional modifications to the rule are therefore not necessary. The Commission proposed rules in the context of the overlay of ''written policies and procedures reasonably designed.''[216] The ''reasonably designed'' component, consistent with other Commission rules for clearing agencies, helps ensure that policies and procedures are thoughtfully tailored to the specific governance and organizational structure of each individual clearing agency. The commenter suggests that the construction of the proposed requirement for this policies and procedures rule is ''generous'' to the registered clearing agencies and the boards. Policies and procedures are subject to the SRO rule filing process for registered clearing agencies. Except for certain rule changes that do not need approval, set forth in Exchange Act section 19(b)(3)(A)[217] and 17 CFR 240.19b–4(f), an SRO must submit proposed rule changes to the Commission for review (after a public comment period) pursuant to Rule 19b–4 under the Exchange Act.[218] This established process, as required by statute and implemented through a regulatory framework, is not designed to be ''generous'' to the registered clearing agency and its board. An impact of having the rule as a policies and procedures requirement is to subject such policies and procedures to the rigorous SRO rule filing process.

Additionally, the ''reasonableness'' standard embedded in the policies and procedures requirement that is meant to be applied to the independent judgment of the director imposes an objective standard on what would otherwise be the subjective judgment of the director. Such a reasonableness standard helps ensure that analysis under the rule occurs from an objective, rather than subjective perspective. The reasonableness standard better ensures that the director and the registered clearing agency could not simply assume that the director's judgment would not be impaired by a relationship when it would be favorable for the director to avoid a conflict in a particular circumstance. Based on the requirements of the rule, registered clearing agencies generally should evaluate whether certain relationships might affect the judgment of a director.

*E. Management of Risks From Relationships With Service Providers for Core Services*

1. Proposed Rule 17Ad–25(i)

Proposed Rule 17Ad–25(a) would define the term ''service provider for critical services'' to mean any person that is contractually obligated to the registered clearing agency for the purpose of supporting clearance and settlement functionality or any other purposes material to the business of the registered clearing agency. Proposed Rule 17Ad–25(i)(1) would require each registered clearing agency to establish, implement, maintain, and enforce

[209] *See id.*

[210] *See id.* (stating that ''disclosure, while an effective tool for the clearing agency to identify and recognize a conflict of interest, is insufficient by itself to reduce the potential harm a conflict of interest may have on the clearing agency.'').

[211] *See* IDTA at 5 (stating that ''[t]o ensure all voices are heard, the policies and procedures should mandate that the reviewing and mitigation of conflicts are conducted by a diverse group, and, most particularly, not only large institutions. . . . the IDTA recommends the consideration of the impact on institutions that are not FSOC designated SIFIs. Small and middle-market participants would be able to provide ongoing feedback on how policies are impacting the markets in order to minimize conflicts of interest and ensure competition among institutions of all sizes'').

[212] *See supra* Part II.B.3 (discussing the approach to participation by small and medium-sized participants); *infra* Part II.F (discussing requirements for considering stakeholder viewpoints, including the views of small and medium-sized participants).

[213] *See* DTCC at 3–4, ICE at 5, LSEG at 13.

[214] Better Markets at 22.

[215] *Id.*

[216] *See, e.g.,* 17 CFR 240.17Ad–22(d), (e); 17 CFR 240.17Ad–27; *see also* Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872, 13905 (Mar. 6, 2023) (explaining that a ''reasonably designed'' requirement enables the clearing agency to tailor policies and procedures to accommodate its individualized internal operations, systems, business models and users as it determines how best to achieve compliance with the rule).

[217] 15 U.S.C. 78s(b)(3)(A).

[218] *See* 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4.

written policies and procedures reasonably designed to enable the board to confirm and document that risks related to relationships with service providers for critical services are managed in a manner consistent with the registered clearing agency's risk management framework, and to review senior management's monitoring of relationships with service providers for critical services. Proposed Rule 17Ad–25(i)(2) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to approve policies and procedures that govern the relationship with service providers for critical services. Proposed Rule 17Ad–25(i)(3) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to review and approve plans for entering into third-party relationships where the engagement entails being a service provider for critical services to the registered clearing agency. Proposed Rule 17Ad–25(i)(4) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to enable the board to, through regular reporting to the board by senior management, confirm that senior management takes appropriate actions to remedy significant deterioration in performance or address changing risks or material issues identified through ongoing monitoring.

In the Governance Proposing Release, the Commission explained that it proposed a companion governance requirement to existing rules to make explicit the registered clearing agency's board obligation to oversee the range of its service providers for critical services, particularly as registered clearing agencies explore and use new technologies to facilitate prompt and accurate clearance and settlement in new and innovative ways and may increasingly determine that service providers will offer the most effective technology to perform key functions.[219] The Commission provided many examples of service provider relationships meant to be scoped into the proposal to capture the range of relationships and wide variety of functions that service providers perform on behalf of the registered clearing agency.[220] For example, a clearing agency may contract with its parent company to staff the registered clearing agency; [221] a clearing agency may contract with one or more investment advisers to help facilitate the closing out of a defaulting participant's portfolio; [222] a clearing agency may use one or more data service providers to help calculate pricing information for securities; [223] a clearing agency may also purchase technology services from service providers that may help to facilitate clearance and settlement in a number of ways.[224] As the Commission stated in the Governance Proposing Release, in each of the cases described above, failure of the service provider to perform its obligations would pose significant operational risks and have critical effects on the ability of the registered clearing agency to perform its risk management function and facilitate prompt and accurate clearance and settlement.[225] Additionally, absent regular monitoring and oversight, these relationships could endanger the operational resilience of a registered clearing agency and call into question the registered clearing agency's ability to meet its obligations under the Exchange Act.[226] In this regard, the Commission emphasized that outsourcing a clearance and settlement functionality to a service provider for critical services does not relieve the registered clearing agency of its statutory and regulatory obligations, which remain with the registered clearing agency.[227] It was against this backdrop and as part of the evolution of the registered clearing agency regulatory framework that the Commission proposed these requirements.[228]

Commenters generally supported the proposed rule and the Commission's policy objectives.[229] However, some commenters objected to the definition of ''service provider for critical services'' as unclear and overbroad and to proposed Rule 17Ad–25(i) as confusing the roles of senior management and the board.[230] Some commenters also believed that the Commission underestimated the burdens and costs of proposed Rule 17Ad–25(i).[231]

The proposed definition and requirements on service provider oversight were: (i) meant to capture outsourced services [232] directly applicable to core clearance and settlement functionality; (ii) not meant to impose duplicative responsibility to manage service provider relationships on the board when these are already within the remit of senior management to manage service provider relationships,[233] and, so, in this regard, (iii) the proposed requirements would

[219] *See* Governance Proposing Release, *supra* note 2, at 51836–37.

[220] *See id.* at 51836.

[221] *See, e.g.,* DTCC, Businesses and Subsidiaries, *https://www.dtcc.com/about/businesses-and-subsidiaries; see also* Governance Proposing Release, *supra* note 2, at 51836 n.137 (providing the same example and also explaining that three registered clearing agencies, DTC, FICC, and NSCC, are subsidiaries of DTCC).

[222] *See, e.g.,* NSCC, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures (Dec. 2021), at 84, *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf* (''NSCC utilizes the services of investment advisors and executing brokers to facilitate such [close-out purchase and sale] transactions [for open Continuous Net Settlement (CNS) positions] promptly following its determination to cease to act. NSCC may engage in hedging transactions or otherwise take action to minimize market disruption as a result of such purchases and sales.''); *see also* Governance Proposing Release, *supra* note 2, at 51836 n.138 (providing the same example).

[223] *See, e.g.,* FICC, Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures (Dec. 2021), at 58, 65, *https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/FICC_Disclosure_Framework.pdf* (''Collateral securities are re-priced every night, from pricing sources utilized by FRM's [Financial Risk Management's] Securities Valuation unit. . . . FICC utilizes multiple third-party vendors to price its eligible securities and uses a pricing hierarchy to determine a price for each security.''); *see also* Governance Proposing Release, *supra* note 2, at 51836 n.139 (providing the same example).

[224] *See* Governance Proposing Release, *supra* note 2, at 51836.

[225] *See id.*

[226] *See id.* at 51837.

[227] *See id.* at 51836.

[228] *See id.*

[229] *See* Barclays et al. at 3; ISDA at 6; DTCC at 7.

[230] *See* OCC at 10 (stating that the Commission approach is ''overbroad, unnecessarily prescriptive, and duplicative of long-standing director obligations extant in general corporate law and reinforced by current Commission regulation and OCC rules.''); DTCC at 3 (stating that ''[w]hile we support the Commission's overall policy objectives . . . the proposed requirements and definition are overly broad, could conflict with existing requirements and standards other regulators have applied in respect of CSPs, confuse the distinction between the roles of the board and management, and will deter otherwise qualified individuals from serving as registered clearing agency board directors'').

[231] *See* OCC at 10 (stating that ''though more time and clarity regarding the scope and application of the Proposed Rule 17Ad–25(i) are required to conduct a deeper analysis into the potential cumulative costs of compliance with it, we preliminarily believe such costs could be considerable''); DTCC at 3 (stating that ''[w]e also believe the Proposal significantly underestimates the burdens and costs of these requirements''); CCP12 at 7.

[232] *See* Governance Proposing Release, *supra* note 2, at 51836, 51846 n.195.

[233] *See id.* at 51837 (explaining that ''the board should be aware of the risks flowing into the registered clearing agency . . . and maintain awareness of those risks over time by monitoring management's oversight of the relationship. In its traditional function as a check on management, the board can help ensure that, for example, management assesses and addresses performance issues by the provider under any agreement with the provider and helps to ensure that product or other deliverables are provided timely and consistent with the terms of the agreement.'').

not double or multiply the costs and burdens required of the registered clearing agencies. Nonetheless, as discussed below, to ensure the Commission has fully addressed the concerns raised by commenters, and to specify the intended scope of proposed Rule 17Ad–25(i) and the roles of the board and senior management in the oversight of service providers, the Commission is modifying at adoption (1) the definition of ''service provider for critical services'' [234] and (2) Rule 17Ad–25(i).

Specifically, the Commission is modifying the definition to refer to: (a) ''a written services provider agreement for services provided to or on behalf of the registered clearing agency, on an ongoing basis'' to replace the proposed definition's reference to ''contractually obligated to the registered clearing agency''; and (b) ''directly supports the delivery of clearance or settlement functionality'' to replace the proposed definition's reference to ''supporting clearance and settlement functionality.'' The Commission also provides guidance below that the scope of the definition of ''service providers for core services'' generally should include cloud services, pricing services, model services, matching services, any services related to straight-through processing, and collateral management services.

Additionally, the Commission is modifying Rule 17Ad–25(i) to more clearly delineate the roles of senior management and the board, in response to commenters. First, under Rule 17Ad–25(i)(1), the Commission is preserving the proposed Rule 17Ad–25(i)(1) policies and procedures requirement to document service provider risks but is modifying the final rule to make clear that senior management must evaluate and document risks related to the service provider agreement, including under changes to circumstances and potential disruptions, and whether the risks can be managed consistent with the clearing agency's risk management framework. Second, under Rule 17Ad–25(i)(2), the Commission is requiring a companion policies and procedures requirement found in Rule 17Ad–25(i)(1) by requiring in Rule 17Ad–25(i)(2) that senior management submit to the board for review and approval the service provider agreement and senior management's evaluation that is required in Rule 17Ad–25(i)(1). Third, the Commission is moving the policies and procedures requirement originally in proposed Rule 17Ad–25(i)(2) to Rule 17Ad–25(i)(3), now modified to make clear that senior management has the responsibility to establish policies and procedures that govern relationships and manage risks related to service provider agreements, while also making clear that the board is responsible for reviewing and approving such policies and procedures.

Fourth, under Rule 17Ad–25(i)(4), the Commission is preserving the proposed policies and procedures requirement originally contained in proposed Rule 17Ad–25(i)(4) to have ongoing monitoring to remedy significant deterioration in performance or address changing risks or material issues identified through ongoing monitoring. But the Commission is now modifying Rule 17Ad–25(i)(4) to clearly delineate the roles of senior management and the board. Specifically, Rule 17Ad–25(i)(4) is modified to require through policies and procedures that senior management performs the ongoing monitoring and report to the board any action senior management takes to remedy significant deterioration in performance or address changing risks or material issues identified. Rule 17Ad–25(i)(4) is also modified to have policies and procedures to require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider in circumstances where the risks or issues cannot be remedied, which senior management must submit to the board. Rule 17Ad–25(i)(4) is also being modified to clearly delineate that the board is to evaluate any senior management action taken to remedy significant deterioration in performance or address changing risks or materials identified.

The modifications are meant to address commenters' concerns regarding the potential that the board is being required to undertake responsibilities reserved for senior management, as well as other elements of the proposed rule. In this regard, the modifications differentiate more clearly the roles of senior management and the board in the context of Rule 17Ad–25(i) while preserving the intended impact of the proposed rule. While the words and phrases in the proposed rule have changed and moved, the thematic elements in the requirements for the board and senior management remain unchanged.

2. Definition of Service Provider for Core Services

Although a commenter stated that the definition of ''service provider for critical services'' is sufficiently clear and scoped,[235] other commenters stated that it is unclear and overbroad.[236] One suggested amending the definition to: (1) cover any mutual understanding or agreement between a registered clearing agency and third-party entity by which the third-party entity is required or commits to provide ongoing goods or services to the registered clearing agency pursuant to a written contract; [237] (2) establish a clear definition of what makes a service provider ''critical,'' including providing a non-exhaustive list of relationships and service providers that registered clearing agencies should consider, as well as guidance on how to interpret materiality in this context; [238] and (3) to include only a service provider that ''directly supports the delivery of clearing and settlement functionality or any other purpose material to the business of the registered clearing agency.'' [239] Another commenter objected to the definition, stating that its scope is broader than the definition of ''SCI System'' under Regulation SCI [240] and also stated that the text ''supporting clearance and settlement functionality'' without modification could ''potentially capture virtually all non-trivial service providers to registered clearing agencies, particularly if clearance and settlement services is the only or primary service offering of the registered clearing agency.'' [241] Another commenter stated that this proposed requirement would potentially capture a large number of non-trivial service providers to registered clearing

[234] As discussed further below, Rule 17Ad–25(a) now uses the term ''service providers for core services,'' not ''critical services.''

[235] *See* ISDA at 7.

[236] *See, e.g.,* DTCC at 21; OCC at 10; ICE at 6; CCP12 at 6–7.

[237] *See* DTCC at 7 (''[T]he written contract would make clear that local police, fire, and other municipal services are explicitly out of scope. The proposed definition of service provider should also include an 'ongoing basis' element. Without this element, a one-off or single service may be included within the scope of the Proposal and trigger application of the full risk management lifecycle in the same way that a recurring arrangement does.'').

[238] *See id.* at 8 (stating that ''[w]ith respect to the question of clarifying which service providers are in fact 'critical' for the purposes of ensuring effective board oversight, we respectfully ask that the Commission first consider more fully how its approach to CSPs in the Proposal interacts, and potentially creates redundancy or misalignment, with existing similar concepts that apply to registered clearing agencies, whether under existing Commission requirements (such as Regulation Systems Compliance and Integrity or 'Regulation SCI') or under applicable international standards.'').

[239] *Id.* at 8.

[240] *See* OCC at 12–13 (stating that ''the proposed definition is significantly broader than the definition used to define SCI Systems.' . . . If the Commission adopts a rule regarding the oversight of relationships with service providers for critical services, OCC requests the Commission revise the definition of 'service providers for critical services' to align it with the definition of SCI Systems.'').

[241] *Id.* at 27.

agencies, particularly in cases where clearance and settlement services are the only or the primary service offering of the registered clearing agency, and therefore, suggested that the definition be changed to ''any person that is contractually obligated to the registered clearing agency for the purpose of providing critical services that directly support clearance and settlement functionality.'' [242]

To address the concerns raised above, the Commission is modifying the definition in Rule 17Ad–25(a) at adoption to contain three key elements to specify its scope: (i) ''a written services provider agreement for services provided to or on behalf of the registered clearing agency'' to replace the proposed definition's reference to ''contractually obligated to the registered clearing agency''; (ii) ''on an ongoing basis'' nature of the services provided; and (iii) ''directly supports the delivery of clearance or settlement functionality'' to replace the proposed definition's reference to ''supporting clearance and settlement functionality.'' The changes to the definition better ensure that the final definition of ''service providers for core services'' is clear and properly scoped. The Commission discusses each of these modifications in turn below.

First, the Commission is modifying the defined term at adoption to refer to ''core services,'' rather than ''critical services'' as proposed.[243] To provide further clarity and to address comments requesting a non-exhaustive list of service provider relationships under Rule 17Ad–25(i),[244] the Commission provides guidance that ''core services'' generally should include cloud services, pricing services, model services, matching services, any services related to straight-through processing, and collateral management services. This list is not meant to be an exhaustive list of ''core services'' but is being provided to give examples of the services that generally should be in scope of the definition while allowing clearing agencies some discretion to apply the definition to their specific markets and participants served and products cleared. The services in this list reflect services that registered clearing agencies are seeking from service providers, based on the Commission's supervisory experience. For example, a registered clearing agency may consider the use of cloud services to modernize and further develop the systems that underpin its core clearance and settlement functionality, facilitating, among other things, the calculation of its margin requirements, the modeling of financial risk, and communication with clearing agency participants. Similarly, pricing and model services directly support core clearance and settlement functionality when they are used by a registered clearing agency to calculate end-of-day settlement obligations and margin requirements for clearing agency participants. In addition, clearing agency technologies that facilitate matching services, straight-through processing, and collateral management are themselves the functions of a clearing agency and facilitate core clearance and settlement of securities transactions, and so such technologies generally should be within the scope of the modified ''core services'' definition.

Second, the Commission is modifying the definition of ''service provider for core services'' in adopting Rule 17Ad–25(a) to mean ''any person that, through a written services provider agreement for services provided to or on behalf of the registered clearing agency, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of the registered clearing agency.'' Rule 17Ad–25(a) now uses the term ''service providers for core services,'' not ''critical services,'' as the Commission observes that some commenters requested that the Commission scope the definition of service providers to overlap with the definition of ''SCI system'' in Regulation SCI.[245] The Commission recognizes that the use of the word ''critical'' could evoke Regulation SCI considerations for some commenters. However, as explained in the Governance Proposing Release, the definition in proposed Rule 17Ad–25(a) is not the same as used in Regulation SCI—in scope or subject matter.[246] The Commission is not conforming the scope of the defined term to Regulation SCI because the definition of ''service provider for critical services'' in proposed Rule 17Ad–25(a) is, as suggested by a commenter, purposefully wider in scope than the definition of ''SCI system'' in Regulation SCI because the definition of ''service provider for critical services'' addresses relationships beyond those concerning only technology or systems, as explained in the Governance Proposing Release.[247]

The definition is modified to include the components of ''a written services agreement for services provided to or on behalf of the registered clearing agency, on an ongoing basis'' because in the Commission's view, core services supporting clearance or settlement functionality should be clearly memorialized in a written agreement that specifies the key elements of any core services being provided. Specifically, cloud services, pricing services, model services, matching services, any services related to straight-through processing, and collateral management services are examples of ongoing services often provided to a registered clearing agency that would be subject to a written services agreement and therefore within scope of the final rule. Such written services agreements may not necessarily be entered into by the registered clearing agency with a service provider for core services; rather, and consistent with the final rule, such written services agreement could be entered into by the parent or an affiliate of the registered clearing agency for services provided to or on behalf of the registered clearing agency. In modifying this element of the definition, the Commission recognizes that the written agreement provides the foundation upon which a registered clearing agency can assess, manage, and monitor the performance of a service provider, as well as assess, manage, and monitor the risks of the core service—and outsourced clearance or settlement functionality. In this regard, the Commission agrees with the commenter that the written agreement provides the registered clearing agency with the legal authority to direct the service provider to comply with the obligations in the agreement,[248] which is important as the registered clearing agency still bears the responsibility for compliance with any statutory or regulatory obligation when it chooses to rely on such a service provider.[249]

Additionally, the modifications to the definition are intended to make clearer that municipal service providers (which are not generally subject to written

[242] *See* CCP12 at 7.

[243] *See* Governance Proposing Release, *supra* note 2, at 51836.

[244] *See* DTCC at 8.

[245] *See* OCC at 12, 27; DTCC at 8.

[246] *See* Governance Proposing Release, *supra* note 2, at 51836 (providing examples of a wide variety of functions that service providers perform on behalf of the registered clearing agency, including its parent company providing staff, investment advisers facilitating the closing out of a defaulting participant's portfolio, data service providers helping calculate pricing information for securities, technology service providers facilitating clearance and settlement).

[247] *See id.*

[248] *See* DTCC at 7.

[249] *Cf.* Governance Proposing Release, *supra* note 2, at 51836 (stating that ''[u]ltimately, it is the responsibility of the board to oversee the relationships that management establishes with service providers to help ensure that management is performing its function more effectively and that the clearing agency can facilitate prompt and accurate clearance and settlement.'').

service agreements for ongoing services to the registered clearing agency) are not captured in the definition, as commenters have suggested.[250] The Commission previously addressed this scoping concern in the Governance Proposing Release,[251] and such services neither support the core clearance or settlement functionality of the registered clearing agency nor are material to the clearing agency's business, in that the power company does not perform the core clearance or settlement functionality or material clearing agency business functions itself.

In addition, the Commission is modifying the definition to capture service providers that provide services on an ongoing basis that directly support the delivery of clearance or settlement functionality or any other purposes material to the business of the registered clearing agency. The modifications change the scope of the proposed definition to capture ongoing services and not limit capture of services to a single instance. The defined term also captures those services that directly support the core functionality of a clearing agency. In this regard, service providers retained for administrative tasks or a limited, one-time provision of services would not be covered by this definition. These changes respond to commenters' concerns and also reflect current practices in which registered clearing agencies have cloud services, pricing services, model services, matching services, services related to straight-through processing, and collateral management services provided by service providers to directly support the registered clearing agency's clearance or settlement functionality on an ongoing basis. Finally, the Commission is modifying the definition to refer to ''clearance *or* settlement'' functionality (emphasis added), rather than ''clearance *and* settlement functionality'' as proposed, to ensure that the definition is consistent with the generalized way in which the Commission often refers to ''clearance and settlement.'' That is, the definition was intended to address both functions in an ''either/or'' sense, as not all registered clearing agencies provide both functions and the Commission often speaks to the collective set of functions without specifying whether one is ''clearance'' or ''settlement.''

3. Roles of Senior Management and the Board

While at least two commenters acknowledged the corporate governance principle that the board conducts oversight of management,[252] several commenters objected to the approach in proposed Rule 17Ad–25(i), stating that the rule confused the distinction between the roles of the board and management, thereby contravening this corporate governance principle and potentially deterring otherwise qualified individuals from serving as directors.[253] Specifically, some commenters understood the proposed rule to shift the responsibility for oversight of service providers from management to the board.[254] One commenter urged a more principles-based approach and also sought clarity as to the scope of proposed Rule 17Ad–25(i)(4), which in the commenter's view did not appear to be limited to ''service providers for critical services'' and so could apply to ''significant deterioration in performance,'' ''changing risks,'' or ''material issues'' regarding the business of the registered clearing agency. This commenter recommended adding a materiality threshold to proposed Rule 17Ad–25(i)(4) to focus the board on ensuring that management has appropriate processes in place to identify and elevate material changing risks.[255] One commenter recommended flexibility in allowing the board to determine ''the process and materiality'' of service providers of critical services.[256] Another commenter urged the Commission to take an alternative approach to differentiate the board and management roles in oversight of service provider relationships.[257]

Additionally, some commenters expressed concern regarding the proposed requirement for the board to ''confirm'' risks posed by a service provider. According to one commenter, because proposed Rule 17Ad–25(i)(4) includes a requirement for the board to ''confirm that senior management takes appropriate actions to remedy significant deterioration in performance or address changing risks or material issues,'' which is ''not consistent with a board's oversight role[, ] [i]t is unclear how, in practice, a board could satisfy this 'confirmation' function without engaging in a management function, which would conflict with and distract from the board's oversight functions.'' [258] With regard to statements in the Governance Proposing Release that registered clearing agencies could confirm and document the risks posed by a service provider for critical services by completing a self-assessment based on the format and substance of Annex F to the PFMI,[259] two commenters expressed concern. One stated that ''the board itself should not conduct such an assessment, as such tasks should be performed by an internal corporate function such as third-party risk management, internal audit, or a similar function and then reported to the board (or board-level committee).'' [260] Another commenter stated that although it ''does not believe that the Commission should require that the board confirm and document through a self-assessment that risks related to relationships with service providers for critical services are managed in a manner consistent with its risk management framework. . . . [it] does believe that the Commission

[250] *See* DTCC at 7 (suggesting a modification to the definition to include a ''written contract [which] would make clear that local police, fire, and other municipal services are explicitly out of scope. The proposed definition of service provider should also include an 'ongoing basis' element. Without this element, a one-off or single service may be included within the scope of the Proposal and trigger application of the full risk management lifecycle in the same way that a recurring arrangement does.'').

[251] *See* Governance Proposing Release, *supra* note 2, at 51835, n.133 (explaining that the proposed rule would not apply to utility companies, such as a power company providing general power services for the registered clearing agency, although general power services are necessary to allow a registered clearing agency to function and operate, as a general matter).

[252] *See, e.g.,* CCP12 at 7; LSEG at 14 (''We agree that it is a specific responsibility of the board to have oversight.'').

[253] *See, e.g.,* CCP12 at 7 (stating that the ''enhanced board oversight would duplicate the work that is currently performed by staff and management at considerable additional cost, compromising the careful check and balance relationship of the board and management.''); OCC at 10–11 (stating that the proposed rule's oversight dynamic ''would impose responsibilities on the Board akin to those that are squarely within the purview of management by effectively requiring the Board to manage the relationship with service providers for critical services''); ICE at 6 (stating that the proposal ''would require the board to go beyond its oversight responsibilities and tasks the board with a role in managing such relationships.'').

[254] *See, e.g.,* DTCC at 8–10, 14 (stating that ''[w]e believe that such a shift in responsibility is inappropriate insofar as what the Proposal effectively requires is not board oversight of CSP relationships but instead direct board management of such relationships.''); OCC at 10–11; CCP12 at 7.

[255] *See* OCC at 13.

[256] *See* LSEG at 14 (''[T]here should be flexibility to allow the board to determine the process and materiality of service providers of critical services. For example, allowing the board to specifically delegate to a qualified sub-committee of the board, with appropriate escalation and reporting to the board.'').

[257] *See* DTCC at 8–10, 14 (stating that ''[a]s an alternative approach, we recommend that the Commission not impose the obligations set forth in sub-parts (1) and (3) of proposed Rule 17 Ad–25(i) directly on the board. . . . [and] follow the approach it and other global regulators have applied in similar contexts and with the positive outcome of helping ensure resiliency and management of CSP risk,'' citing to Rule 1003(b)(l) of Regulation SCI and Annex F of the PFMI as precedent).

[258] ICE at 6.

[259] *See* Governance Proposing Release, *supra* note 2, at 51837.

[260] CCP12 at 8.

should state explicitly that a properly executed self-assessment similar to the Annex F described in the Proposed Rule is evidence of compliance with Proposed Rule 17Ad–25(i).'' [261]

It was not the Commission's intent to merge, adjust, or duplicate management functions with those of the board in contravention of traditional corporate governance principles with the board directly managing the service provider relationships, as commenters have suggested.[262] In the Governance Proposing Release, the Commission acknowledged the differentiated roles and traditional functions [263] of senior management and the board.[264] To improve clarity in response to commenters concerns,[265] the Commission is modifying the rule at adoption to specify and differentiate the roles and responsibilities of the board and senior management of the registered clearing agency in the oversight of service providers. These changes in the final rule better ensure that risks posed by service providers for core services are properly monitored and managed and better delineate the board oversight function in line with corporate governance principles. Because the modifications are meant to more clearly differentiate the roles of senior management and the board in the context of Rule 17Ad–25(i) while preserving the intended impact of the proposed rule, the words and phrases in the proposed rule have changed and moved in Rule 17Ad–25(i), but the requirements for the board and senior management remain unchanged. Each requirement of Rule 17Ad–25(i) is further explained below.

First, under Rule 17Ad–25(i)(1) as adopted, a registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to evaluate and document the risks related to an agreement with a service provider for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework.[266] In the Governance Proposing Release, the Commission discussed the role of senior management to monitor each relationship with a service provider for critical services, confirming and documenting that the risks related to such relationships have been considered and addressed consistent with the clearing agency's risk management framework.[267] The Commission agrees with the commenter's concern with regard to the term ''confirm.'' [268] Under Rule 17Ad–25(i)(1), while preserving proposed Rule 17Ad–25(i)(1)'s policies and procedures requirement to document service provider risks, the Commission is modifying the final rule to specify that senior management must evaluate—rather than requiring that the board must ''confirm''—and document risks related to the service provider agreement, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework. If changes to circumstances (*e.g.,* a need to expand or scale up the scope or breadth of services of the service provider beyond what was initially agreed to or envisioned) and potential disruptions (*e.g.,* disruptions caused by natural disasters or systems outages) occur, senior management must evaluate and document risks related to such changes and disruptions. The added language of ''changes to circumstances and potential disruptions'' is meant to reflect the parallel elements in Rule 17Ad–25(i)(4) regarding ''changing risks or material issues identified.'' These modifications to Rule 17Ad–25(i)(1) require the policies and procedures to clearly delineate the role senior management must undertake to evaluate risks posed by service providers for core services to the registered clearing agency, as requested by commenters. For the same reason to address commenters' concerns [269] regarding a board self-assessment under Annex F of the PFMI, the Commission is not requiring the board to conduct a self-assessment of such risks.

Second, under Rule 17Ad–25(i)(2) as adopted, a registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to submit to the board for review and approval any agreement that would establish a relationship with a service provider for core services, along with the risk evaluation required in Rule 17Ad–25(i)(1). As a companion policies and procedures requirement to Rule 17Ad–25(i)(1), Rule 17Ad–25(i)(2) captures the intent of proposed Rule 17Ad–25(i)(3)'s requirement for policies and procedures to require the board to ''review and approve plans for entering into third-party relationships where the engagement entails being a service provider for critical services.''

Rule 17Ad–25(i)(1) requires policies and procedures to have senior management evaluate service provider relationship risks posed to the registered clearing agency, while Rule 17Ad–25(i)(2) requires policies and procedures to have senior management submit to the board its risk evaluation and any agreements for board review and approval. In response to commenters' concerns,[270] the modifications are designed to clearly differentiate the responsibilities the board and senior management have in this regard in line with corporate governance principles, which was the Commission's intent at proposal. In the Governance Proposing Release, the Commission explained that Proposed Rule 17Ad–25(i)(1) would also require review of senior management's oversight of a service provider relationship.[271] The Commission stated its belief that the board should be aware of the risks flowing into the registered clearing agency, including through its relationships with service providers for critical services, and maintain awareness of those risks over time by monitoring management's oversight of

[261] OCC at 27.

[262] For this reason, the Commission also believes that the proposed costs and burdens for Rule 17Ad–25(i) were generally accurate, as further discussed in Part V.F.

[263] *See, e.g.,* Governance Proposing Release, *supra* note 2, at 51837 (stating that ''[i]n its traditional function as a check on management, the board can help ensure that, for example, management assesses and addresses performance issues by the provider under any agreement with the provider and helps to ensure that product or other deliverables are provided timely and consistent with the terms of the agreement.'').

[264] *See, e.g.,* Governance Proposing Release, *supra* note 2, at 51836 (recognizing that ''the board . . . oversee[s] the relationships that management establishes with service providers to help ensure that management is performing its function more effectively and that the clearing agency can facilitate prompt and accurate clearance and settlement.'').

[265] *See* DTCC at 8–10, 14; CCP12 at 7; LSEG at 14; OCC at 10–11; ICE at 6.

[266] In the Governance Proposing Release, the Commission had suggested that one method of confirming and documenting the risks posed by a service provider for critical services to the registered clearing agency would be for the board to complete a self-assessment based on the format and substance of Annex F in the PFMI, which highlights oversight expectations applicable to critical service providers. Given that commenters expressed concerns about duplicating management functions at the board level, the Commission is not adopting this guidance. *See* DTCC at 3; CCP12 at 7.

[267] *See* Governance Proposing Release, *supra* note 2, at 51837.

[268] *See* ICE at 6.

[269] CCP12 at 8; OCC at 27; DTCC at 8–10, 14 (stating that ''[a]s an alternative approach, we recommend that the Commission not impose the obligations set forth in sub-parts (1) and (3) of proposed Rule 17 Ad–25(i) directly on the board'').

[270] *See, e.g.,* DTCC at 8–10, 14; CCP12 at 7; LSEG at 14; OCC at 10–11; ICE at 6.

[271] *See* Governance Proposing Release, *supra* note 2, at 51837.

the relationship. In the Governance Proposing Release, the Commission explained that, under Proposed Rule 17Ad–25(i)(3), the board would review and approve plans for entering into third-party relationships where the engagement entails being a service provider for critical services to the registered clearing agency.[272] The Commission stated its belief such board participation is necessary to ensure the maintenance of sound risk management principles as the clearing agency enters into contractual relationships with third parties.[273] Board involvement helps ensure that management has sufficiently established terms of performance by the service provider that can support the needs of the registered clearing agency and that management also has evaluated, assessed, and accounted for any increased level of risk to the registered clearing agency.[274] As stated in the Governance Proposing Release, the board generally should monitor such matters as part of its oversight responsibilities.[275] In this regard, Rule 17Ad–25(i)(2), modified as adopted, is substantively consistent with the discussion of this element of the proposed rule in the Governance Proposing Release.

Third, under Rule 17Ad–25(i)(3) as adopted, a registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board to be responsible for reviewing and approving such policies and procedures. In modifying Rule 17Ad–25(i)(3), the Commission is moving the policies and procedures responsibility originally in proposed Rule 17Ad–25(i)(2) to Rule 17Ad–25(i)(3). These modifications are being made to address commenters' concerns about the rule not being clear about differentiated senior management and board responsibilities under corporate governance principles.[276] As a general matter, proposed changes to a registered clearing agency's policies and procedures must be approved by board action or under authority delegated by the board.[277] As adopted, Rule 17Ad–25(i)(3) is written to explicitly require that senior management—as the group responsible for evaluating the risks of service provider relationships pursuant to Rule 17Ad–25(i)(1)—establish policies and procedures to manage the risks posed by and relationships with the service providers for core services, and that such policies and procedures are reviewed and approved by the board. In this regard, Rule 17Ad–25(i)(3), as adopted, is substantively consistent with established practices of registered clearing agencies with regard to board review and approval of registered clearing agency policies and procedures.

Fourth, under Rule 17Ad–25(i)(4) as adopted, a registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to perform ongoing monitoring of the relationship, and report to the board for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board. Under Rule 17Ad–25(i)(4) at adoption, the Commission is preserving proposed Rule 17Ad–25(i)(4)'s policies and procedures requirement to have ongoing monitoring to remedy significant deterioration in performance or address changing risks or material issues identified through ongoing monitoring. But the Commission is now modifying Rule 17Ad–25(i)(4) to clearly delineate the roles of senior management and the board in this context, as a response to commenters' corporate governance concerns.[278] Specifically, Rule 17Ad–25(i)(4) is modified to require policies and procedures that senior management perform the ongoing monitoring and report to the board any action senior management takes to remedy significant deterioration in performance or address changing risks or material issues identified. Rule 17Ad–25(i)(4) is also modified to require policies and procedures that has senior management assess and document weaknesses or deficiencies in the relationship with the service provider in circumstances where the risks or issues cannot be remedied, which senior management must submit to the board. Elements of ''remedy significant deterioration in performance or address changing risks or material issues'' were contained in Proposed Rule 17Ad–25(i)(4). The modifications in the adopted rule are meant to frame the responsibilities more clearly to senior management, as requested by commenters. Rule 17Ad–25(i)(4) is also being modified to clearly delineate that the board is to evaluate any senior management action taken to remedy significant deterioration in performance or address changing risks or materials identified.

In its traditional function as a check on management based on corporate governance principles, the board can better ensure that products or other deliverables are provided timely and consistent with the terms of a service provider agreement, if the board evaluates senior management action to address service provider performance issues.[279] In the Governance Proposing Release, the Commission explained that under Proposed Rule 17Ad–25(i)(4), the board would have responsibility for overseeing the extent to which senior management remedies performance issues under a service provider contract.[280] The changes to Rule 17Ad–25(i)(4) make clear that while senior management is responsible for ongoing monitoring of the service provider relationship and its attendant risks, it is the board that is responsible for overseeing senior management's response to those risks. This layered oversight responsibility in the context of service providers is important because a key source of risk in any service provider relationship to a registered clearing agency is the operational risks that may arise if a service provider is not performing pursuant to the agreed terms of the contractual relationship.[281] Without the board's effective ongoing monitoring of such risks and oversight of management's remedial actions to control such risks, the registered clearing agency may be faced with increasing levels of risk that undermine sound risk management and operational resilience.[282] Accordingly, the Commission continues to believe that policies and procedures should specifically provide for reporting to the board by senior management regarding the service provider relationship and associated risks, as well as the board oversight and evaluation of senior management's ongoing monitoring of

[272] *See id.*

[273] *See id.*

[274] *See id.*

[275] *See id.*

[276] *See, e.g.,* DTCC at 8–10, 14; CCP12 at 7; LSEG at 14; OCC at 10–11; ICE at 6.

[277] *See* CCA Standards Adopting Release, *supra* note 4, at 70805.

[278] *See, e.g.,* DTCC at 8–10, 14; CCP12 at 7; LSEG at 14; OCC at 10–11; ICE at 6.

[279] *See* CCA Standards Adopting Release, *supra* note 4, at 70805.

[280] *See* Governance Proposing Release, *supra* note 2, at 51837.

[281] *See id.*

[282] *See id.*

and response to the service provider relationship and risks.[283]

The Commission is not modifying Rule 17Ad–25(i)(4) to be more flexible and principles-based, as two commenters requested.[284] Rule 17Ad–25(i)(4) provides the general parameters for registered clearing agencies to establish policies and procedures to meet the requirements of the rule without prescribing the manner and content of the ongoing monitoring of the service provider relationship and the manner and content of the board's evaluation of senior management action taken to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring. In response to one commenter's request to have the flexibility for the board to delegate its responsibilities under Rule 17Ad–25(i) to a qualified board sub-committee,[285] the board may choose to do so under Rule 17Ad–25(e), which provides that if any committee has the authority to act on behalf of the board, the composition of that committee must have at least the same percentage of independent directors as is required for the board of directors.

*F. Obligation To Formally Consider Stakeholder Viewpoints*

1. Proposed Rule 17Ad–25(j)

Proposed Rule 17Ad–25(j) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in its governance and operations on a recurring basis.

In the Governance Proposing Release, the Commission explained that such ''other relevant stakeholders'' generally would include investors, customers of clearing agency participants, and securities issuers.[286] The Commission also explained that requiring registered clearing agencies to document their consideration of such viewpoints would help ensure that a record exists of the viewpoints provided by participants and other relevant stakeholders regarding material developments in a registered clearing agency's governance and operations by requiring the registered clearing agency to document that it had received such viewpoints and evaluated their merits.[287]

Many commenters supported the proposed approach to addressing stakeholder viewpoints.[288] Some commenters sought clarity regarding whether existing registered clearing agency rules are sufficient to comply with the proposed rule or whether they need to introduce or modify any existing processes.[289] Furthermore, some commenters recommended limiting the scope of the rule to material developments which affect clearing agencies' risk management or risk profile.[290] Other commenters sought clarity on the frequency of outreach with relevant stakeholders, as well as the design and approach to fora formation.[291] Finally, some commenters recommended that the Commission harmonize proposed Rule 17Ad–255(j) with CFTC regulations at 17 CFR 39.24(b)(12) requiring the establishment of an RWG to obtain input from stakeholders.[292] The Commission addresses each of these topics in Parts II.F.2 through II.F.7.

2. Concern Regarding Duplicative Requirements

Several commenters suggested that existing rules at the registered clearing agencies already consider views of clearing agency participants and other stakeholders, stating that Rule 17Ad–255(j) may be duplicative, redundant, or unnecessary.[293] As discussed further below, the Commission is adopting Rule 17Ad–255(j) to supplement existing Commission requirements and to help formalize processes and structures at the registered clearing agencies.

First, one registered clearing agency commenter explained that its existing governance framework, which includes the composition of its board and reliance on an advisory group it titles the ''Financial Risk Advisory Council'' (FRAC), affords relevant stakeholders the opportunity to provide their viewpoints on relevant risk management issues.[294] Another registered clearing agency commenter similarly stated that its existing governance framework captures clearing participant and other stakeholder views through its board composition as well as through its diverse array of clearing agency participant and stakeholder working groups.[295] Given its current structure, the commenter sought clarity on whether a covered clearing agency, subject to requirements in 17 CFR 240.17Ad–252(e)(2)(iii) and (vi) (''Rule 17Ad–252(e)(2)''),[296] is likely already observing the requirements set forth in proposed Rule 17Ad–255(j), or whether there is something more a covered clearing agency should do to satisfy the proposed requirements. If the latter, the commenter stated its belief that such an approach would be redundant, overly prescriptive, and likely reduce the ability of each unique covered clearing agency to develop the necessary stakeholder inputs.[297] If the former, the

[283] *See id.*

[284] *See* OCC at 13; LSEG at 14.

[285] *See* LSEG at 14 (''[T]here should be flexibility to allow the board to determine the process and materiality of service providers of critical services. For example, allowing the board to specifically delegate to a qualified sub-committee of the board, with appropriate escalation and reporting to the board.'').

[286] *See* Governance Proposing Release, *supra* note 2, at 51838 (''The Commission believes that other relevant stakeholders generally would include investors, customers of participants, as well as securities issuers.'').

[287] *See id.* (''[T]he Commission believes that requiring registered clearing agencies to document their consideration of such viewpoints would help ensure that a record exists of the viewpoints provided by participants and other relevant stakeholders regarding material developments in a clearing agency's governance and operations, ensuring that the clearing agency indicated that it had received such viewpoints and evaluated their merits.'').

[288] *See* ISDA at 5; SIFMA at 3; Citadel at 1; Barclays et al. at 2.

[289] *See* OCC at 14; DTCC at 12–13; CCP12 at 9.

[290] *See* OCC at 15, CCP12 at 9; DTCC at 13–14.

[291] *See* CCP12 at 8,10; ISDA at 5; SIFMA AMG at 5–7; Barclays et al. at 2; ICI at 5; Better Markets at21.

[292] *See* ICI at 4; SIFMA AMG at 5; SIFMA at 3–4.

[293] *See* OCC at 14; DTCC at 12–13; CCP12 at 9; ICE at 6.

[294] *See* OCC at 14–15 (explaining various initiatives as part of a ''multi-pronged'' governance framework that furthers ''the goal of considering the viewpoints of relevant stakeholders in corporate initiatives,'' including elements of its bylaws and committee structure, use of public directors on its board, and the FRAC).

[295] *See* DTCC at 12 (explaining its view that ''DTCC's participant-owned governance structure results in a board and board committee composition that is strongly aligned and widely diverse in representing the various participant types that benefit from the services of the registered clearing agencies'' and that the DTCC clearing agencies ''maintain a diverse array of participant and stakeholder working groups that are designed to solicit input from constituencies beyond those immediately represented on the boards of the registered clearing agencies'' including its ''Systemic Risk Roundtable, Risk Advisory Council, Clearing Agency Liquidity Council, Client Risk Forum, and FMI Forum'').

[296] *See* 17 CFR 240.17Ad–252(e)(2)(iii) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to support the public interest requirements in Exchange Act section 17A, and the objectives of owners and participants); 17 CFR 240.17Ad–252(e)(2)(vi) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency).

[297] *See* DTCC at 13 (stating that further prescribing and standardizing the current approach in existing Rules 17Ad–252(e)(2)(iii) and (vi) is redundant, overly prescriptive, and will likely reduce the ability of each unique covered clearing agency to develop the necessary stakeholder inputs unique to the cleared markets that they serve).

commenter recommended that the Commission clarify this point further.[298] The commenter also inquired whether the proposed rule was intended for covered clearing agencies to document how they currently comply with Rules 17Ad–252(e)(2)(iii) and (vi), recommending that the Commission modify the proposed rule to more specifically consider how it would apply to covered clearing agencies versus other registered clearing agencies.[299]

With respect to the first two comments stating that the registered clearing agencies' existing governance framework already captures clearing participant and other stakeholder views, the Governance Proposing Release explained that many clearing agencies already have established committees, working groups, and other fora of varying size, scope, and formality to share and solicit information with participants, the customers of their clearing agency participants, and other stakeholders regarding changes to risk management and other services offered by the registered clearing agency.[300] The Commission proposed Rule 17Ad–255(j) to help promote the formalization of these processes and structures to help ensure their ongoing use, both for the existing set of registered clearing agencies and for potential future registrants.[301] Registered clearing agencies that have already established such structures generally should evaluate their own internal processes, including their approach to observing Rules 17Ad–252(e)(2)(iii) and (vi) if applicable, and determine to what extent any additional steps need to be defined, formalized, or otherwise undertaken to ensure compliance with Rule 17Ad–255(j). In contrast to existing rules for covered clearing agencies, Rule 17Ad–255(j) establishes new requirements for written policies and procedures reasonably designed to require the solicitation, consideration, and documentation of the consideration of the view of stakeholders regarding certain material developments. The specific requirements with respect to solicitation and documentation do not exist in Rule 17Ad–252(e)(2) and therefore the new requirements are not redundant. The requirements are also not overly prescriptive or likely to reduce the ability of each unique covered clearing agency to develop the necessary stakeholder inputs because the registered clearing agencies would have the discretion to determine the appropriate approach to solicitation and documentation relating to stakeholder views. Because Rule 17Ad–255(j) is not duplicative of requirements in Rule 17Ad–252(e)(2), the Commission is also not modifying Rule 17Ad–255(j) for covered clearing agencies in response to these comments.

In asserting that proposed Rule 17Ad–255(j) is duplicative of existing requirements, several commenters cited Exchange Act Rule 19b–4, which generally requires a registered clearing agency, as an SRO, to submit proposed changes to its rules, policies, and procedures to the Commission for review, a process which includes publication and a solicitation of public comments.[302] In addition, commenters also cited requirements under the Dodd-Frank Act for registered clearing agencies that are SIFMUs to file an advance notice of certain material changes, which are also subject to public comment.[303] Another commenter stated its belief that, with respect to the solicitation of risk-based viewpoints, these existing requirements for SROs and SIFMUs are sufficient.[304] Finally, one commenter explained that clearing agencies dually registered as DCOs with the CFTC are subject to requirements for CFTC approval under CFTC regulations at 17 CFR 40.5 and 17 CFR 40.6 that provide market participants with opportunities to review and comment on modifications to rules, procedures, or operations.[305] The commenters believe that, because the above-described filing processes for proposed changes already solicit feedback from the public regarding material issues that affect a registered clearing agency, Rule 17Ad–255(j) would be duplicative of these existing requirements.[306]

The Commission is not modifying Rule 17Ad–255(j) in response to the commenters because soliciting public comments relating to a registered clearing agency's rule filings and advance notices, and the clearing agencies' consideration of stakeholder views as proposed in Rule 17Ad–255(j), are two different processes with wholly separate and distinct purposes. The Commission explained in the Governance Proposing Release that clear and transparent governance arrangements help optimize the registered clearing agency's decisions, rules, and procedures because transparency in the registered clearing agency's internal governance process improves the quality of information shared with its participants and stakeholders, thereby improving the ability of public commenters to provide meaningful comments on proposed rule changes submitted to the Commission or CFTC in one of the above-described filing processes.[307] In particular, it is beneficial for registered clearing agencies to exchange information and consider stakeholder views at any appropriate time to enhance transparency and the quality of the proposed rule, and not only after the proposed rule has been published for public comments. Because these represent two distinct steps to enhance transparency, as well as two distinct processes with different objectives, soliciting and considering stakeholder viewpoints is not duplicative of existing requirements. For the reasons stated above, the Commission is not modifying Rule 17Ad–255(j) in response to these comments because the proposed requirements are not duplicative or redundant of the existing filing processes cited by commenters.

3. Proposed Scope of ''Governance and Operations''

Several commenters explained that the scope of the proposed rule should focus on material developments which may impact a registered clearing agency's risk profile or risk management, and not ''governance and operations.'' [308] First, one commenter stated that the reference to ''governance and operations'' is overly broad and vague.[309] Additionally, the commenter explained that it was unclear whether a registered clearing agency would be required to solicit, consider, and document views from participants and relevant stakeholders before executing

[298] *See id.*

[299] *See id.*

[300] *See* Governance Proposing Release, *supra* note 2, at 51838.

[301] *See id.*

[302] *See* OCC at 15; CCP12 at 9; ICE at 6–7. *See generally* 15 U.S.C. 78s; 17 CFR 240.19b–4 (setting forth requirements for the filing with the Commission of proposed changes to SRO rules).

[303] *See* ICE at 6–7; OCC at 15. *See generally* 12 U.S.C. 5465(e)(1)(A); 17 CFR 240.19b–4(n) (setting forth the requirement for a SIFMU to file advance notice of material changes with its designated supervisory authority under the Dodd-Frank Act).

[304] *See* CCP12 at 9 (also explaining that clearing agencies disclose extensive information in their public quantitative and qualitative disclosures under the PFMIs and operate under publicly available rulebooks).

[305] *See* ICE at 7.

[306] *See* ICE at 6; CCP12 at 9; OCC at 15.

[307] *See* Governance Proposing Release, *supra* note 2, at 51813 (''[C]lear and transparent governance arrangements help optimize the clearing agency's decisions, rules and procedures that the Commission considers in the SRO rule filing process because clearing agency transparency improves the quality of the information shared with stakeholders, which in turn improves the public comments submitted in response to rule filings.'').

[308] *See* OCC at 15; CCP12 at 9; DTCC at 13–14.

[309] *See* OCC at 15.

on certain measures,[310] which according to the commenter represent core functions for which the board is required to exercise its considered discretion in the interests of the registered clearing agency.[311] Instead, the commenter explained that such a requirement should be tailored to address those changes that represent a risk to the registered clearing agency's core clearance and settlement operations, and the commenter recommended that the Commission accomplish that goal by modifying the language of the proposed rule to narrow the scope of changes from those that represent ''material developments'' in ''governance or operations'' to those that ''could materially affect the level or nature of risk presented by the registered clearing agency.'' [312] In the commenter's view, this would be consistent with existing requirements for registered clearing agencies that are SIFMUs to submit to the Commission for public notice and comment any changes to operations or procedures that could materially affect the level or nature of risk presented by the registered clearing agency.[313]

Second, another commenter recommended that the registered clearing agency focus on the solicitation of risk-based viewpoints on matters that would materially affect a registered clearing agency's risk profile and related risk management and to not solicit input on every topic on which stakeholders wish to have input (*e.g.,* participation requirements, fees, new technologies, and services).[314] The commenter further stated that governance of a registered clearing agency should be within the sole purview of the registered clearing agency itself, as long as the registered clearing agency complies with regulatory requirements and applicable laws and appropriately considers the interests of customers of clearing agency participants and objectives of owners and participants on matters that materially impact a registered clearing agency's risk profile.[315] Regarding governance, this commenter also stated that it is imperative to ensure that market participants' involvement in clearing agency governance, including through the RMC, is limited to risk-based viewpoints (as opposed to, for example, commercially-driven viewpoints), due to the differing objectives between a registered clearing agency and its participants in their respective day-to-day operations.[316]

The third commenter stated that whereas it is common practice for clearing agencies to solicit feedback on operational matters such as rule changes, prospective enhancement to services or risk management, and fee changes, the governance structure of the clearing agency, where they meet regulatory requirements, is a matter for the board, executives and majority shareholders where such clearing agency forms part of a wider group.[317] The fourth commenter stated that scoping the requirements to material changes in the ''governance and operations'' of a registered clearing agency is overly broad with the likely result that registered clearing agency governance will become less dynamic and responsive to changes and risks in the markets they serve.[318] Therefore, the commenter's recommendation is that the Commission modify the scope of the proposed requirements to ''risk management,'' instead of ''governance and operations.'' The commenter further elaborated that referencing ''risk management'' should be effective in capturing the broad swathe of issues and topics described by the Commission in the proposing release as being of interest to the broader universe of participants and stakeholders in a registered clearing agency.[319] Regarding whether gaps may persist in stakeholder input related to governance, this commenter also recommended that the Commission consider all of the various channels that currently exist for such input (citing, for example, the various filing processes for proposed rule changes previously described in Part II.F.2).[320] Finally, two commenters recommended modifying the rule to specifically require risk-based input via RWGs to ensure input from a broad range of market participants and other stakeholders.[321]

In proposing Rule 17Ad–255(j), the Commission described the scope of the rule as ''governance and operations'' because these categories would address, in a comprehensive way, the clearance and settlement operations of registered clearing agencies without being overly prescriptive. However, permitting input into governance matters may, for example, require the board to disclose to participants and other relevant stakeholders sensitive or non-public information that impacts only the registered clearing agency. The Commission also agrees that the broad scope of ''governance'' may burden the registered clearing agency unnecessarily with the consideration of proposals and concerns that impede the ability of the board or the registered clearing agency to prioritize effectively its risk management function.

Accordingly, in adopting Rule 17Ad–255(j), the Commission is modifying the rule to specify viewpoints as to ''risk management and operations'' rather than ''governance and operations.'' Although some commenters recommended that the Commission replace both terms ''governance and operations'' with ''risk management,'' it is appropriate to retain ''operations,'' because not all operational functions that directly affect participants and other stakeholders clearly fall within the concept of ''risk management.'' Specifically, although topics associated with operational risk management would fall within the scope of ''risk management'' more generally, the basic operations of the registered clearing agencies relating to functions of the clearing agency (*e.g.,* the design and functioning of the processes and technology systems that support the infrastructure of the registered clearing

[310] The commenter identified the following measures: hiring a new member of the senior management team, hiring a new management level committee with authority to make recommendations to the board, selecting a new director, selecting a new outside auditor, or determining the scope of its internal audit plan. *See id.*

[311] *See id.*

[312] *See id.*

[313] *See supra* Part II.F.2 and note 303 (also discussing the requirements in the Dodd-Frank Act for SIFMUs to submit advance notices to their designated supervisory authority).

[314] *See* CCP12 at 9.

[315] *See id.*

[316] *See* CCP12 at 9–10 (explaining that a ''clearing agency's first priority is to contribute to the stability of the broader financial markets, that ''a clearing agency is a risk-manager—not a risk-taker—and supports financial stability by effectively managing the risks of its market participants'' and that ''[m]arket participants, on the other hand, do not have the same regulatory objective of prioritizing financial stability in their day-to-day operations'').

[317] *See* LSEG at 15.

[318] *See* DTCC at 3.

[319] *See* DTCC at 14 (stating that ''risk management'' would also capture the broad swathe of issues and topics noted by the Commission in the Governance Proposing Release as being of interest to the broader universe of participants and stakeholders in a registered clearing agency, including financial risk management, cyber and operational resiliency, default management, and the potential introduction of new cleared products or services).

[320] *See* DTCC at 13 (stating that ''we also believe, in considering the question of what gaps persist in stakeholder input to governance, that the Commission should more purposefully consider all of the various existing channels that currently exist for such input: namely, the self-regulatory organization proposed rule change notice and SIFMU advance notice requirements.'').

[321] *See* Barclays et al. at 2 (recommending a requirement to establish risk working groups as a forum to seek risk-based input from a broad array of market participants); SIFMA at 3–4 (suggesting a requirement that registered clearing agencies formally establish one or more risk working groups to provide a forum for them to seek risk-based input from a broad array of market participants, including participant members and their clients).

agency itself, and the way that participants and other stakeholders connect to such systems) may not. It is appropriate to enable participants and other stakeholders to have input into matters that may be purely operational relating to functions of the clearing agency, including how to access systems.

One commenter stated that clearing agencies should widely consult on any material changes to their risk profile and, in addition, recommended that all relevant topics relating to clearing agency risk management be discussed with an RWG or similar fora.[322] Similarly, another commenter stated that all matters and proposed changes related to the registered clearing agency's rules, procedures, and operations that could materially affect the risk profile of the clearing agency including, but not limited to, any material changes to the risk model, default procedures, participation requirements, and risk management practices, as well as the clearing of new products that could significantly impact the clearing agency's risk profile, should be presented to the RWG for consideration.[323] Regarding these comments, the Commission is not limiting the scope of Rule 17Ad–25(j) to defined risk management categories such as default management, new products or margin methodologies. Rather, the clearing agencies should have the discretion to determine the appropriate topics within risk management and operations relating to the functions of the clearing agencies and determine whether these changes are material developments under the broader direction of soliciting feedback regarding ''operations and risk management.'' In the Commission's view, the topics identified by commenters generally should be the types of topics relating to the functions of the clearing agency on which a registered clearing agency solicits feedback.

Another commenter stated that, to better clarify the expected perspective to be applied by RMC and RWG members, the Commission should explicitly state that in addition to supporting the safety and efficiency of the registered clearing agency, RMC and RWG members should also support the stability of the broader financial system.[324] The Commission is not modifying, in connection with the comment, that the proposed rule on stakeholder viewpoints should include a provision which requires RWGs to consider the safety and efficiency of the registered clearing agency as well as the stability of the broader financial system. The purpose of the proposed rule, as stated above, is for registered clearing agencies to solicit, consider, and document their consideration of the views of participants and other relevant stakeholders regarding material developments in their risk management and operations. Given the varied composition of the fora or RWG, which may include clearing agency participants and other stakeholders including customers of clearing agency participants and other industry participants, the interests of each of these groups may not be perfectly aligned with the registered clearing agency relating to the safety and efficiency of the registered clearing agency or even with broader financial stability measures. In this sense, the commenter may be seeking to better align disparate interests between stakeholders and the registered clearing agencies in connection with supporting the safety and efficiency of the registered clearing agency as well as the stability of the broader financial system; however, pursuant to Commission rules, registered clearing agencies already have obligations to support safety and efficiency, as well as the public interest requirements in section 17A of the Act, throughout their governance processes and not only with respect to soliciting feedback.[325] Given their relatively wider view of market practices and market dynamics, registered clearing agencies may be better positioned to assess safety, soundness, and financial stability than their participants or other stakeholders, and so adding such a requirement applicable to stakeholder viewpoints as a whole may dampen interest in or participation in such stakeholder outreach, limiting the registered clearing agency's ability to continue to collect and consider the wide range of information that is uniquely available to it. Instead, registered clearing agencies should structure and design the fora to address the markets and products they serve so that they can gather useful information effectively. As a result, the Commission is not modifying the scope of the proposed rule to include more granular elements or a reference to the stability of the broader financial system.

One commenter sought clarity on ''material'' changes that require stakeholder viewpoints and recommended that the Commission provide more guidance on what changes would be material.[326] Given materiality may differ across clearing agencies as well as the products cleared, clearing agencies should have the discretion and responsibility to determine whether a development in their risk management and operations is material in the context of their own operations. Pursuant to Rule 17Ad–25(j), a registered clearing agency would be required to establish written policies and procedures in compliance with the rule, and those policies and procedures therefore would also need to clearly define material developments. Given this policies and procedures requirement, a registered clearing agency could make clear in any outreach to participants and other stakeholders how it has defined such material developments. The Commission is not modifying Rule 17Ad–255(j) to provide more specificity as to what constitutes materiality.

Finally, one commenter expressed the view that the board's fiduciary duty to the clearing agency would not conflict with the proposed requirements in Rule 17Ad–255(j) but that it may need to conduct further legal analysis on this point under the relevant local requirements in its jurisdiction.[327] In the Commission's view, soliciting and considering stakeholder views relating to operations and risk management helps the board to fulfill its fiduciary duty to the registered clearing agency because it helps the board to collect information from affected stakeholders regarding the clearing agency's core risk management function.

[322] *See* ISDA at 5 (''These groups should discuss all relevant topics to CCP risk management that impact on their participants' own risk management, including, but not limited to: New Products, Operational Changes, Membership criteria, Default Management, Risk Framework, including margin models and stress testing scenarios, non-default loss mitigation and provisions, and recovery.'').

[323] *See* SIFMA AMG at 6 (recommending that matters required to be brought to the RMC and RWG include all matters and proposed changes to rules, procedures, or operations that could materially affect the risk profile of the clearing agency, including, but not limited to, any material change to its risk model, default procedures, participation requirements, and risk management practices, as well as the clearing of new products that could significantly impact its risk profile).

[324] *See* SIFMA AMG at 5.

[325] *See, e.g.,* 17 CFR 240.17Ad–22(e)(2)(ii), (iii) (requiring a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that clearly prioritize the safety and efficiency of the covered clearing agency and support the public interest requirements in section 17A of the Exchange Act, applicable to clearing agencies).

[326] *See* ISDA at 6 (''[A]s it is very difficult to define what material changes are, we support principle-based rules and see a strong role of supervision. The Commission could also define examples of what changes would be material to provide more guidance to the clearing agency.'').

[327] *See* LSEG at 15.

4. Frequency and Method of Outreach

Several commenters stated that the Commission should not specify the frequency with which clearing agencies solicit viewpoints from participants and other stakeholders.[328] One commenter specifically stated that the frequency should depend on the topic and its materiality to the clearing agency, clearing agency participants, and relevant stakeholders.[329] Another commenter stated that RWGs should be deployed only on an as-needed basis to assess the same issues as those considered by the RMC.[330] A third commenter stated that a more prescriptive requirement for the frequency of obtaining feedback could force registered clearing agencies to solicit stakeholder viewpoints even when there are no material matters to discuss, solely to satisfy a regulatory requirement.[331] From the commenter's perspective, the frequency of solicitation should be determined based on when topics arise that could have a material impact on the risk profile of the clearing agency, which will inherently vary across clearing agencies. This commenter also stated that not requiring a minimum frequency for soliciting viewpoints is more efficient and could lead to more active participation when viewpoints are solicited.[332]

The Commission agrees that clearing agencies should retain discretion when considering how frequently and via what mechanism to engage with participants and other stakeholders, as the most appropriate timing and mechanism are likely to vary by topic, informed in part by the markets served and products cleared. Therefore, the Commission is retaining in final Rule 17Ad–255(j) the reference to ''recurring,'' and is not modifying the proposed rule by specifying the frequency of any solicitations or outreach.

One commenter specifically recommended that consultation with market participants should be required prior to a clearing agency filing rules with the Commission.[333] Similarly, another commenter suggested that the Commission encourage registered clearing agencies to publicly consult on any proposals affecting their risk management practices before filing them as proposed rule changes with the Commission.[334] As an example, the commenter cited current practice at the Financial Industry Regulatory Authority (''FINRA'') to consult on significant changes to its own SRO rules when those rules would change the compliance obligations of its members, suggesting that the Commission and registered clearing agencies consider FINRA's model as a potentially workable approach.[335] Finally, one commenter also recommended that the clearing agencies consult with a ''broad spectrum'' of market participants prior to submitting a rule change.[336] Although the Commission recognizes the benefits of consulting with participants and other stakeholders *prior* to proposed changes that concern key elements of risk management functions or operations, registered clearing agencies are best positioned to assess when to conduct such outreach and accordingly, the rule should not mandate such consultations. Rather, clearing agencies would be required to consult with participants and other stakeholders regarding material developments in its risk management and operations on a *recurring* basis. Depending on the scope and materiality of the proposed rule change, the registered clearing agency can ultimately determine whether to consult with participants and other stakeholders. As a result, the Commission is not modifying the proposed rule to provide more specificity regarding the timing of the outreach with stakeholders in response to these comments.

One commenter asked the Commission to clarify expectations regarding the method of communication with participants and other stakeholders and, specifically, whether written consultation conducted pursuant to Rule 17Ad–255(j) would need to be disclosed pursuant to Form 19b–4.[337] If the latter, the commenter stated that this would adversely impact communications between the clearing agency and stakeholders and increase costs and burdens relating to the SRO rule filing process for registered clearing agencies.[338]

As previously discussed, proposed Rule 17Ad–255(j) would require each registered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders.[339] Therefore, registered clearing agencies would have discretion in the design and structure of stakeholder outreach including the method of communication (*e.g.,* use of an advisory group or council, other types of in-person meetings, and written correspondence). Additionally, although a clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require the board of directors to solicit and consider viewpoints of participants and other relevant stakeholders, nothing in the rule prohibits the board of directors from obtaining assistance in soliciting viewpoints of participants and other relevant stakeholders from staff of the registered clearing agencies. Although registered clearing agencies may determine the appropriate method of communication under Rule 17Ad–255(j), whether such discussions must ultimately be disclosed pursuant to Form 19b–4 would turn on the specific facts and circumstances of any such written correspondence. As previously discussed in Part II.F.2, Rule 17Ad–255(j) and the process for filing by SROs of proposed rule changes serve distinctly different purposes and so engagement under Rule 17Ad–255(j) may (or may not) implicate corresponding obligations regarding disclosure on Form 19b–4. Accordingly, Rule 17Ad–255(j) need not be modified at adoption to include more specific requirements on the method of communication with stakeholders.

5. Use of Fora To Satisfy the Rule

As stated in the Governance Proposing Release, the Commission recognized that many registered clearing agencies already have established committees, working groups, and other fora of varying size, scope, and formality to share and solicit information with clearing agency participants, the customers of clearing agency participants, and other stakeholders regarding changes to risk management

[328] *See, e.g.,* LSEG at 15 (''This should be determined on a case-by-case basis depending on the topic and materiality to the clearing agency and to its members/relevant stakeholders.''); CCP12 at 10 (stating that the rule should not specify how often the clearing agency needs to solicit viewpoints or how consideration of these viewpoints needs to be documented).

[329] *See* LSEG at 15.

[330] *See* SIFMA AMG at 5.

[331] *See* CCP12 at 10.

[332] *See id.*

[333] *See* ISDA at 5.

[334] *See* SIFMA at 4.

[335] *Id.*

[336] *See* ICI at 5.

[337] *See* DTCC at 13 (seeking to understand whether the Commission expects registered clearing agencies to treat stakeholder engagements under proposed Rule 17Ad–255(j) as ''any correspondence or other communications reduced to writing (including comment letters) to and from such [registered clearing agency] concerning the proposed rule change'' as required by the General Instructions to Form 19b–4 and expressing concern that applying such an interpretation ''would likely chill open and frank discussions between the clearing agency and the stakeholder groups,'' as well as ''increase the costs and burdens to the SRO rule filing process for registered clearing agencies'').

[338] *See id.*

[339] *See supra* Part II.F.1.

and other services offered by the registered clearing agency.[340] These fora are useful tools for information sharing and help to promote an open dialogue between various stakeholders.

The Commission received several comments relating to the formation of fora (or RWGs) in connection with stakeholder viewpoints. First, one commenter explained that registered clearing agencies must have the flexibility to determine the appropriate structure and use of these groups in a way that best serves their risk management needs and the markets that they serve.[341] From the commenter's perspective, prescribing granular requirements would reflect a shift away from principles-based rules and would be highly concerning given the diversity in number and types of fora that registered clearing agencies already use to solicit stakeholder input. The commenter stated that the Commission should defer to the registered clearing agency's discretion to determine how best to obtain and consider stakeholder input and not include in the rule granular requirements for the committees, working groups, and other fora.[342] The Commission agrees with the comment that clearing agencies should have the flexibility to determine the most appropriate structure for the use of fora or RWGs to ensure that these fora are effectively designed to address the risk management needs of the registered clearing agency, and therefore the Commission is not modifying the proposed rule to include specific requirements.

One commenter stated that the clearing agency should not select the participants of the fora, but allow representatives of the clearing agency participants and, depending on the topic, also customers of clearing agency participants and other stakeholders, to freely join these fora.[343] Some commenters indicated that these fora should include representatives from both clearing agency participants and their customers.[344] Another commenter recommended that the RWGs be composed of experts with knowledge of specific risk issues.[345] Finally, one commenter recommended that the Commission require the establishment of RWGs to seek input from a broad array of market participants so all market participants can freely represent the view of their firms and other similarly situated market participants.[346] In response to these comments, although stakeholders may include a wide range of clearing agency participants, customers of clearing agency participants, and other stakeholders, as discussed in the Governance Proposing Release, the proposed rule would require each registered clearing agency to establish and enforce written policies and procedures reasonably designed to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders. Depending on the topic and issue or scope of issues under discussion, the registered clearing agency may occasionally need to reach out to a select group to obtain the appropriate amount of stakeholder input. As such, the Commission did not require specific fora participation in the proposed rule because the process for clearing agencies to effectively collect and consider stakeholder views could be adversely impacted. For those same reasons, the Commission is not modifying the rule to specify the composition of or qualifications for participation in such fora.

Several commenters expressed the view that the rule should specify the composition of fora to ensure participation by customers of clearing agency participants and other end users. One commenter recommended that the RWG's membership include a meaningful proportion of customers of clearing agency participants to promote broad and fair representation of end users' risk-based views and input vis-a-vis other market participants.[347] Specifically, to obtain a ''meaningful proportion,'' the commenter recommended that the Commission adopt selection parameters that would ensure a cross-section of customers representing a meaningful level of customer risks are included. As previously discussed,[348] the Commission's view is that other relevant stakeholders generally would include investors, customers of clearing agency participants, and securities issuers. However, registered clearing agencies should have the discretion to determine the appropriate design and structure of the fora to address any material developments relating to risk management and operations, including the appropriate proportion of customers of clearing agency participants, because not all topics relating to risk management and operations will necessarily impact customers of clearing agency participants and other types of stakeholders. The Commission therefore is not modifying the rule to provide additional specification that a meaningful proportion of customers of clearing agency participants be represented within stakeholder views. Nonetheless, a registered clearing agency generally should endeavor to solicit viewpoints from a representative cross-section of affected parties.

Another commenter stated that the proposed rule did not specify the consideration of views held by small participants, or even a certain range of participants, and that mere ''consideration'' requirements would be subject to influence by boards, which the commenter explained would be beholden to large broker-dealers that serve increasingly concentrated markets.[349] From this commenter's perspective, the requirement to consider stakeholder views does nothing to remedy potential vulnerabilities in the nomination process or the broader independence requirement. The commenter stated that only more prescriptive interventions can remedy the underlying problem of director independence.[350] Because the types of participants, as well as their comparative sizes, vary significantly across the markets served by the different registered clearing agencies, registered clearing agencies should have the discretion to determine the appropriate design and structure of the fora including the consideration of small participants and a range of participants. Therefore, the Commission is not modifying Rule 17Ad–255(j) in response to the comment regarding the inclusion of small participants and range of participants. As to the commenters' concerns regarding the role

[340] *See* Governance Proposing Release, *supra* note 2, at 51838.

[341] *See* CCP12 at 8.

[342] *See id.*

[343] *See* ISDA at 5.

[344] *See* SIFMA AMG at 5 (''To better clarify the requirement for 'participant' membership, the Commission should explicitly require that RMCs and RWGs include the independent views of representatives of clearing members and clearing member customers . . .''); Citadel at 1 (supporting the proposed requirement for registered clearing agencies to implement written policies and procedures to solicit and consider the views of participants (including customers of direct members) regarding material developments in governance and operations because there may be circumstances where the interests of the clearing agency, its direct members, and customers are not fully aligned, and explaining that such a requirement will result in fairer and more informed decision-making, and ultimately more confidence in the clearing infrastructure).

[345] *See* SIFMA AMG at 5.

[346] *See* Barclays et al. at 2 (recommending a requirement for risk working groups as a forum to seek risk-based input from a broad array of market participants to ensure that all market participants can freely represent the views of their firms and other similarly situated market participants).

[347] *See* ICI at 5.

[348] *See supra* Part II.F.1; *see also* Governance Proposing Release, *supra* note 2, at 51838.

[349] Better Markets at 21.

[350] *See id.*

of large and small participants in the context of board composition and the nominating committee, the Commission previously addressed these concerns in Part II.B.3.

One commenter stated its support for contributions by RWGs that reflect a risk-based, independent, and informed opinion; requested that the Commission be explicit that the clearing agency participants and customers of clearing agency participants are representing the perspectives of their employers; and expressed support for the Commission requiring a principles-based approach whereby a registered clearing agency shall employ proportionate measures to mitigate the potential risk of a misuse of confidential information.[351] Although the Commission generally agrees that contributions should be risk-based, independent, and informed, when providing such risk-based input, the Commission is not revising the rule to prescribe that fora be used or how such fora ought to be structured to give registered clearing agencies discretion in how they treat sensitive or confidential information to avoid hampering or discouraging participant or other stakeholder participation in such fora. As a result, the Commission is not modifying Rule 17Ad–255(j) to include more prescriptive requirements regarding how to participate in fora established to achieve compliance with the rule. By comparison, the Commission has considered, and in some cases included, such requirements in the context of the board RMC under Rule 17Ad–255(d), as discussed in Part II.C.

One commenter specified that the Commission should explicitly require registered clearing agencies to establish one or more risk advisory groups, which would have a larger membership than the RMCs and could meet as needed for specific issues to advise the RMCs.[352] Moreover, the commenter stated that the Commission should explicitly require RWG membership be subject to fitness standards and that the membership within each constituency rotate on a three-year basis to welcome diverse views while preserving continuity of expertise.[353] The commenter acknowledges that fitness standards may vary across the registered clearing agencies due to business models or otherwise, but stated that a foundational level of risk management expertise must be a consistent requirement. As stated above,[354] the design and structure of the fora including but not limited to composition, fora count, fora rotation, and fitness standards specifying the level of risk management expertise are best determined by the clearing agencies themselves because they have unique insight into how issues or emerging topics might impact their participants and other stakeholders. Therefore, the Commission is not modifying the proposed rule to add specific requirements with respect to fora formation.

6. Documentation of Stakeholder Views

One commenter stated that although a clearing agency generally should document its consideration of stakeholder viewpoints, each clearing agency should have the discretion to determine the appropriate level of documentation.[355] Two commenters also stated that requiring clearing agencies to document their consideration of participant viewpoints, and thereby ensure that a record of such viewpoints exists and has been evaluated as to their merits would be beneficial.[356] The Commission agrees that documenting the consideration of stakeholder viewpoints helps build a record of the reasons certain actions have been taken over time by the registered clearing agency and therefore helps promote thoughtful and consistent decision-making over time. While each registered clearing agency will be required to document its consideration of the views of participants and other relevant stakeholders, each registered clearing agency may determine the appropriate level of details relating to the documentation of its consideration of stakeholder viewpoints to ensure that the potential burdens associated with the documentation process, and the resulting time it adds to the decision-making process, do not undermine the benefits of soliciting viewpoints from relevant stakeholders.[357] As a result, no modifications are necessary to the proposed documentation requirement.

Another commenter stated that there should be minutes of each meeting relating to RWG or similar fora, which ideally could be made public, or at least be shared with all interested clearing agency participants and customers of clearing agency participants.[358] Furthermore, the commenter recommended that any dissenting views be documented and shared with regulators, including the clearing agency's rationale for not accommodating such views.[359] Similarly, another commenter recommended that clearing agency participants' and end users' feedback be disclosed to regulators.[360] Finally, another commenter recommended that registered clearing agencies be required to respond to market participant feedback, specifically in scenarios where the feedback has not been incorporated into the registered clearing agency's decision.[361]

Documenting the consideration of viewpoints from stakeholders (including minutes) ensures that a record exists of the viewpoints provided by relevant stakeholders. However, the requirement for the board to ''consider'' the views of participants and other relevant stakeholders may not in all cases result in action by the registered clearing agency. A registered clearing agency generally should endeavor to ensure that it has a complete and accurate record of input received, particularly when the registered clearing agency determines that the most appropriate action is action with which some participants or other key stakeholders disagree. However, in the context of soliciting viewpoints, each registered clearing agency should have discretion to determine, in its policies and procedures, the appropriate level of detail relating to documentation across the different mechanisms used to solicit viewpoints, whether through an advisory group or other fora, survey, or other written correspondence, while generally endeavoring to ensure that it has a complete and accurate record of input received. Documentation of stakeholder viewpoints under Rule 17Ad–255(j) would constitute records of

[351] *See* SIFMA AMG at 6.

[352] *See* SIFMA AMG at 4.

[353] *See id.* at 4–5.

[354] *See supra* notes 342–346 and accompanying text.

[355] *See* CCP12 at 10 (stating that a clearing agency should document its consideration of viewpoints received, but that each clearing agency should have the discretion to determine the appropriate level of documentation to balance the need for efficiency with the need to document and disseminate its consideration of these viewpoints, and that this is currently a standard practice).

[356] *See* ISDA at 5; Barclays et al. at 2.

[357] *See infra* Part IV.C.6 (discussing the economic effects of the rule) and V.G (discussing the PRA burdens estimated for the rule).

[358] *See* ISDA at 5.

[359] *See id.* at 6 (''To the degree that the RWG (or a similar forum) expresses dissenting views with regard to a clearing agency's material risk decisions, or the clearing agency is not following advice of the RWG, those dissenting views should be documented and shared with regulators, including the CCP's rationale for not accommodating them.'').

[360] *See* Barclays et al. at 2 (stating that ''as the proposal rightly observes, such a requirement would help promote confidence in the use of participant forums, promote an open dialogue and greater understanding between the clearing agencies and participants and also help the Commission evaluate the ways in which clearing agencies consider stakeholder viewpoints and balance potentially competing viewpoints'').

[361] *See* ICI at 5.

the registered clearing agency, and therefore be subject to review and examination by representatives of the Commission upon request.

With respect to meeting minutes, a registered clearing agency generally should endeavor to disclose their contents as fully as possible, though the Commission acknowledges that, due to the confidential nature of some of the topics discussed regarding risk management and operations, it may not always be appropriate to share such documents in full with the public. Furthermore, some stakeholders may not be as forthcoming in their feedback to registered clearing agencies if all such views would be shared automatically with the public, such as through posting on a public website.

With respect to responding to feedback not taken, it is inappropriate to require in Rule 17Ad–255(j) a response from the registered clearing agency to feedback in cases where the registered clearing agency has not incorporated the feedback into its final decision. The clearing agency may have declined to incorporate the feedback for a variety of reasons. As a general matter, clearing agencies generally should endeavor to provide timely feedback and explanation in response to stakeholder viewpoints, but also retain discretion in determining whether and when to respond to such views or feedback. The Commission therefore is not modifying the rule to require documentation relating to stakeholder views to be disseminated to all registered clearing agency participants or the general public.

7. Harmonization With CFTC Requirements for RWG

One commenter recommended that the Commission harmonize proposed Rule 17Ad–255(j) with the CFTC's more prescriptive approach relating to RMCs [362] and RWGs, including by adding a requirement to establish RWGs.[363] Another commenter also recommended that the Commission adopt requirements for registered clearing agencies to establish RWGs in a manner similar to CFTC requirements, with a corresponding requirement that the RWG include representatives from both clearing agency participants and customers of clearing agency participants.[364] The commenter also recommended that the Commission adopt the list of factors that were specified in CFTC requirements as significantly impacting the registered clearing agency's risk profile, including if a new product has different margining, liquidity, default management, pricing, or other risk characteristics from those applicable to products already cleared. Finally, one commenter, consistent with a recommendation by the CFTC's Market Risk Advisory Committee, suggested that the Commission include in any final rulemaking a requirement that registered clearing agencies formally establish one or more RWGs to provide a forum to seek risk-based input from a broad array of market participants, including clearing agency participants and the customers of clearing agency participants.[365]

In the Commission's view, the differences between the CFTC's final rules at 17 CFR 39.24(b)(12) requiring creation of an RWG and proposed Rule 17Ad–255(j) are appropriate within the context of the full set of requirements contained in Rule 17Ad–255 and considering the different products and markets served by registered clearing agencies. As a general matter, Rule 17Ad–255 imposes specific requirements onto the board-level RMC similar to those contemplated by the CFTC but does not specifically require creation of an RWG when soliciting stakeholder viewpoints.[366] Rule 17Ad–255(j) also does not require a minimum number of meetings or solicitations of feedback, though it does similarly require documentation of feedback and specify the range of parties from whom a registered clearing agency must solicit feedback, including participants, customers of participants, and other stakeholders such as securities issuers. Despite these differences, the objectives of Rule 17Ad–255(j) and the CFTC's rules are the same, and the approaches are consistent considering the discretion afforded in Rule 17Ad–255(j) for developing written policies and procedures. For example, in the Commission's view, a registered clearing agency generally could demonstrate compliance with Rule 17Ad–255(j) by codifying the creation of an RWG under CFTC requirements in its written policies and procedures, assuming that in so doing it addressed the requirements in Rule 17Ad–255(j) to solicit, consider, and document its consideration of stakeholder viewpoints consistent with the rule.

With respect to the list of factors specified in CFTC requirements, the approach in Rule 17Ad–255(j) is more general, focused on soliciting viewpoints regarding ''operations and risk management'' rather than identifying more specifically the discrete topics that should be considered. The two approaches are consistent and Rule 17Ad–255(j) is appropriately targeted given the range of clearing agency functions performed by registered clearing agencies, not all of which are central counterparties,[367] and therefore may not be able to meaningfully solicit feedback on topics like margin or liquidity.

In connection with the third commenter's request to include representatives from both clearing agency participants and customers of clearing agency participants as well as explicitly require that the clearing agencies establish one or more RWGs, as previously discussed in Part II.F.5 above,[368] the rule considers stakeholder feedback from a wide range of participants and other stakeholders, including customers. However, clearing agencies should have the discretion to determine the structure and design of the fora including the composition and the number of fora.

In consideration of the above, 17Ad–255(j) is broadly consistent with the CFTC requirements to establish an RWG and therefore the Commission believes it is unnecessary to modify Rule 17Ad–255(j) in adopting the rule to achieve harmonization with CFTC rules for RWGs.

## III. Compliance Dates

As proposed, the compliance date for Rule 17Ad–255 would be 180 days after publication in the **Federal Register** except that the compliance date for proposed Rules 17Ad–255(b)(1), (c)(2),

[362] The Commission notes that Rule 17Ad–255(d), as discussed in Part II.C, would require the establishment of a board-level RMC, whereas CFTC regulations do not specifically require that the RMC be a board-level committee.

[363] *See* ICI at 4 (stating that ''First, we recommend that the SEC harmonize its proposal with the CFTC's more prescriptive approach to RMCs and RWGs.'').

[364] *See* SIFMA AMG at 5 (stating that, given the relative infrequency of the board's meetings with the more senior members of the RMC, the Commission should adopt the requirement to also establish RWGs in a manner similar to the CFTC, including representatives from both clearing members and clearing member customers, explaining that the RWGs could be composed of experts with knowledge of specific risk issues and be able to be deployed on an as-needed basis to assess the same issues assigned to RMCs, but on a deeper basis).

[365] *See* SIFMA at 3–4.

[366] In addressing the relationship between the CFTC's requirements for the RMC and the Commission's own Rule 17Ad–255, Part II.C discusses in more detail how Rule 17Ad–255 is intended to bolster the overall quality of governance (and therefore risk management) at a registered clearing agency to achieve substantially similar outcomes to the CFTC requirements.

[367] For example, registered clearing agencies may instead be central securities depositories, which perform different functions from CCPs and do not collect margin.

[368] *See supra* notes 342–346 and accompanying text.

and (e) would be 24 months after publication in the **Federal Register**. The Commission is modifying these compliance dates so that the compliance date for Rule 17Ad–255 is 12 months after publication in the *Federal* Register, except that the compliance date for Rules 17Ad–255(b)(1), (c)(2), and (e) is 24 months after publication in the **Federal Register,** for the reasons discussed below.

First, one commenter recommended that the Commission consider a later compliance date for Rules 17Ad–255(b)(1), (c)(2), and (e) to ensure that registered clearing agencies had sufficient time to replace any directors to meet requirements related to independence.[369] In particular, the commenter explained that some directors serve terms longer than two years, and so a later compliance date could help ensure an orderly transition.[370] An orderly transition of directors is important, but a later compliance date is unnecessary to achieve an orderly transition of directors, to the extent such transition is necessary. Even in a case where directors serve three-year terms, the implementation period need not accommodate the expiration of all terms of currently serving directors because the rules do not require the turnover of all directors. To the extent that a clearing agency determines that either its overall board composition or its current set of independent and non-independent directors must change to achieve compliance with the final rules, 24 months provides sufficient time to develop and apply new standards for independent directors in an orderly manner and, as a general matter, to conduct nominations, elections, and appointments of new directors within the clearing agency's established processes for nominations, elections, and appointments. As an example, most clearing agencies would complete two cycles of annual nominations, elections, and appointments before the compliance date. Even for a clearing agency that has directors serving longer terms that are not staggered, the governance arrangements would still provide mechanisms to replace directors in an orderly manner. Such mechanisms include, for example, those that a clearing agency would use to fill a vacancy that occurs when a director vacates her position prior to the end of her term. In addition, even for a clearing agency that does not conduct annual elections of directors, it would still conduct an annual meeting of shareholders, at which off-calendar director elections could be scheduled as needed. In the Commission's view, two years provides sufficient time to ensure an orderly transition of directors, to the extent a registered clearing agency determines that its current board composition should change to meet the requirements in Rule 17Ad–255 for independent directors.

Second, one commenter recommended more generally that the Commission consider a later compliance date because, in the commenter's view, the proposed rules are more burdensome than described by the Commission as proposed.[371] For the reasons discussed in Part II above, and particularly in Part II.E, the proposed rules are not more burdensome than originally described, and in the final rules the Commission has modified the text of the rules to ensure that the obligations under the rule are clear and consistent with the discussion in the Governance Proposing Release. Nevertheless, to ensure that registered clearing agencies have time to consider and develop changes to rules, policies, and procedures to ensure compliance with Rule 17Ad–255, and to submit those changes to the Commission for review when required by section 19 of the Exchange Act and Rule 19b-4, the Commission is adopting a compliance date of 12 months after publication in the **Federal Register** for Rule 17Ad–255, except that the compliance date for Rules 17Ad–255(b)(1), (c)(2), and (e) is 24 months after publication in the **Federal Register**.

## IV. Economic Analysis

### *A. Introduction*

The Commission is sensitive to the economic consequences and effects of the final rules, including their benefits and costs.[372] The Commission acknowledges that, since many of these rules could require a registered clearing agency to adopt new policies and procedures, the economic effects and consequences of these rules include those flowing from the substantive results of those new policies and procedures. Further, as stated above, Exchange Act section 17A directs the Commission to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents when using its authority to facilitate the establishment of a national system for clearance and settlement of transactions in securities.[373]

This economic analysis addresses the likely economic effects of the final rules, including their anticipated and estimated benefits and costs and their likely effects on efficiency, competition, and capital formation. Many of the benefits and costs are difficult to quantify. For example, the issue of divergent incentives is a core economic matter that is persistent across many different types of economic interactions among registered clearing agency stakeholders. Incentives affect the economic outcome of a transaction, but there is no reliable or comparable data across different organizations about how decision-making processes directly affect monetary gains and losses. In addition, quantification of these incentive effects is particularly challenging due to the number of assumptions that would be needed to forecast how registered clearing agencies will respond to the final rules, and how those responses will, in turn, affect the broader market for cleared securities. While the Commission has attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature. However, the inability to quantify benefits and costs does not mean that the benefits and costs of the final rules are any less significant. The Commission sought comment on all aspects of the economic analysis, especially any data or information that would enable a quantification of economic effects, and the analysis below takes into consideration relevant comments received. The Commission also discusses the potential economic effects of certain alternatives to the final rules.

[369] LSEG at 15.

[370] *Id.* (explaining that its directors serve three-year terms, suggesting that a longer implementation period of three years would provide time for complete turnover of the board).

[371] *See* DTCC at 22.

[372] Under Exchange Act section 3(f), whenever the Commission engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, it must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). In addition, section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78w(a)(2).

[373] *See* 15 U.S.C. 78q–1(a)(2)(A).

*B. Economic Baseline*

To consider the effect of the final rules, the Commission first explains the current state of affairs in the market (*i.e.,* the economic baseline). All the benefits and costs from adopting the final rules are changes relative to the economic baseline. The economic baseline in this release considers: (1) the current market for registered clearing agency activities, including the number of registered clearing agencies, the distribution of participants across these clearing agencies, and the scope of trading activity these clearing agencies process, (2) the current regulatory framework for registered clearing agencies, and (3) the current practices of registered clearing agencies that relate to the final rules.

1. Description of Market

Clearing agencies are financial markets infrastructures, which include central securities depositories and central counterparties, and each clearing agency plays an important role in the financial system. In the United States, there are currently six active registered clearing agencies (NSCC, DTC, FICC, ICC, LCH SA, and OCC), and two registered clearing agencies that are inactive (BSECC and SCCP).[374]

DTC provides central securities depository (CSD) services; the other five active registered clearing agencies provide central clearing counterparty (CCP) services. NSCC offers clearance services for equities, corporate and municipal bonds, derivatives, money market instruments, syndicated loans, mutual funds, and alternative investment products in the United States. FICC provides clearance services for government and mortgage-backed securities. ICC and LCH SA are both registered clearing agencies for credit default swaps (''CDS''). OCC offers clearing services for exchange-traded U.S. equity options.

Registered clearing agencies broadly operate under two organizational models. Specifically, the registered clearing agency may be organized so that the participants are owners of the clearing agency,[375] or so that participants are not owners of the clearing agency.[376]

Registered clearing agencies currently operate specialized clearing services and face limited competition in their markets. For example, there is only one registered clearing agency serving as a central counterparty for each of the following asset classes: exchange-traded equity options (OCC), government securities (FICC), mortgage-backed securities (FICC), and equity securities (NSCC). There is also only one registered clearing agency providing central securities depository services (DTC). Registered clearing agencies' participants include securities brokers and dealers, custodian and clearing banks, and certain other investment institutions. Table 1 summarizes the most recent data on the number of participants at each registered clearing agency.

Registered clearing agency activities exhibit high barriers to entry and economies of scale. These features of the existing market, and the resulting concentration of clearing and settlement services within a handful of entities,[377] informs the Commission's examination of the effects of the final rules on competition, efficiency, and capital formation, as discussed below.

TABLE 1—ACTIVE REGISTERED CLEARING AGENCIES AND NUMBER OF PARTICIPANTS

| Registered clearing agency | Abbreviated name | Function | Number of participants [a] |
|---|---|---|---|
| Subsidiaries of The Depository Trust & Clearing Corporation (DTCC): | | | |
| —National Securities Clearing Corporation [b] | NSCC | CCP | 4,090 |
| —The Depository Trust Company [c] | DTC | CSD | 860 |
| —Fixed Income Clearing Corporation (Government Securities Division) [d] | FICC | CCP | 214 |
| —Fixed Income Clearing Corporation (Mortgage Backed Securities Division) [e] | FICC | CCP | 139 |
| Subsidiaries of Intercontinental Exchange (ICE): | | | |
| —ICE Clear Credit [f] | ICC | CCP | 30 |
| Subsidiaries of LCH Group Holdings Ltd (LCH): | | | |
| —LCH SA (CDS Clear Participants Only) [g] | LCH SA | CCP | 25 |
| The Options Clearing Corporation [h] | OCC | CCP | 187 |

[a] Participant statistics were taken from the websites of each of the listed clearing agencies in July 2023.
[b] *NSCC Member Directories, available at http://www.dtcc.com/client-center/nscc-directories.*
[c] *DTC Member Directories, available at http://www.dtcc.com/client-center/dtc-directories.*
[d] *FICC-GOV Member Directories, available at http://www.dtcc.com/client-center/ficc-gov-directories.*
[e] *FICC-MBS Member Directories, available at http://www.dtcc.com/client-center/ficc-mbs-directories.*
[f] *ICE Clear Credit Participants, available at https://www.theice.com/client-center/clear-credit/participants.*
[g] *LCH SA Membership, available at https://www.lch.com/membership/member-search.*
[h] *Member Directory, available at http://www.theocc.com/Company-Information/Member-Directory.*

Registered clearing agencies in the U.S. are an essential part of the infrastructure of the U.S. securities markets due to their role as intermediaries for clearing and settling securities transactions.[378] In the 12-month period from October 2021 to September 2022, approximately $1,270 billion (65 percent) of the notional

[374] Neither BSECC nor SCCP has provided clearing services in over a decade. *See* Exchange Act Release No. 63629 (Jan. 3, 2011) (BSECC ''returned all clearing funds to its members by September 30, 2010, and [ ] no longer maintains clearing members or has any other clearing operations as of that date. [ ] BSECC [ ] maintain[s] its registration as a clearing agency with the Commission for possible active operations in the future.''); Exchange Act Release No. 63268 (Nov. 8, 2010) (''SCCP returned all clearing fund deposits by September 30, 2009; [and] as of that date SCCP no longer maintains clearing members or has any other clearing operations. [ ] SCCP [ ] maintain[s] its registration as a clearing agency for possible active operations in the future.''). Because they do not provide clearing services, BSECC and SCCP are not included in the economic baseline or the consideration of benefits and costs. They are included in the PRA for purposes of the PRA estimate, *see infra* at Part V.

[375] For example, DTC, NSCC, and FICC are subsidiaries of DTCC. Participants of DTC, FICC, and NSCC that make full use of the services of one or more of these clearing agency subsidiaries of DTCC are required to purchase DTCC common shares. *See, e.g.,* Exchange Act Release No. 52922 (Dec. 7, 2005), 70 FR 74070 (Dec. 14, 2005).

[376] For example, OCC is owned by certain options exchanges; ICC is a subsidiary of ICE, which is listed on the New York Stock Exchange; and LCH SA is a subsidiary of LCH Group Holdings, Ltd., which is majority-owned by London Stock Exchange Group plc (a publicly traded company).

[377] *See* DTCC at 4 (''it is true as the Proposing Release suggests that concentration of clearing and settlement services has occurred over time'').

[378] *See* Governance Proposing Release. *supra* note 2, at 51813.

amount of all single-name CDS transactions in the United States were centrally cleared.[379] In 2022, DTCC processed $2.5 quadrillion in securities transactions, and OCC cleared 10.38 billion individual options contracts.[380]

Central clearing generally benefits the markets in which it is available through significantly reducing participants' counterparty risk and through more efficient netting of margin. Consequently, central clearing also benefits the financial system as a whole by increasing financial resilience and the ability to monitor and manage risk.[381] Notwithstanding the benefits, central clearing concentrates risk in the registered clearing agency.[382] Disruption to a registered clearing agency's operations, or failure on the part of a registered clearing agency to meet its obligations, could serve as a source of contagion across U.S. securities markets, resulting in significant costs not only to the registered clearing agency itself or its participants but also to other market participants and the broader U.S. financial system.[383] As a result, proper management of the risks associated with central clearing helps ensure the stability of the U.S. securities markets and the broader U.S. financial system.[384]

2. Overview of the Existing Regulatory Framework

The existing regulatory framework for clearing agencies registered with the Commission includes Exchange Act section 17A and the Dodd-Frank Act, and the related rules adopted by the Commission. The current regulatory system is discussed in the Governance Proposing Release.[385]

The Commission is aware that clearing agencies registered with the Commission may also be subject to other domestic or foreign regulators. Specifically, registered clearing agencies operating in the United States may also be subject to regulation by the CFTC (as derivatives clearing organizations for futures or swaps) and the Board of Governors of the Federal Reserve System (as systemically important financial market utilities or state member banks).[386] In addition, clearing agencies registered with the Commission may be subject to foreign clearing agency regulators. For example, LCH SA is subject to EMIR and is regulated by l'Autorité des marchés financiers, l'Autorité de Contrôle Prudentiel et de Résolution, and the Banque de France.[387]

The Commission also considers relevant international standards when engaging in rulemaking for registered clearing agencies. For example, in 2012, CPMI and IOSCO issued the PFMI, a set of international standards for financial market infrastructures.[388] In connection with rulemaking required by section 805(a)(2)(A) of the Clearing Supervision Act, 12 U.S.C. 5464(a)(2)(A), the Commission considered the principles and responsibilities in the PFMI when adopting Rule 17Ad–22(e).[389] Further, registered clearing agencies must follow state laws applicable to their choice of business structure, such as limited liability companies, corporations, or trusts.[390] Table 2 summarizes the board composition and independent director requirements of the CFTC, the Board of Governors of the Federal Reserve System, and EMIR, as well as the related principle in the PFMI.[391]

[379] Data from DTCC's Trade Information Warehouse, compiled by Commission staff.

[380] *See* OCC, Annual Report (2022), *available at https://annualreport.theocc.com;* DTCC, Annual Report (2022), *available at https://www.dtcc.com/about/annual-report.* Within DTCC, NSCC cleared $2.1 trillion of equity trades every day on average, FICC cleared a total of $1,512 trillion of government securities transactions and $61 trillion of agency mortgage-backed securities transactions, and DTC settled a total of $462 trillion of securities.

[381] *See* Darrell Duffie, Still the World's Safe Haven? Redesigning the U.S. Treasury Market After the COVID–19 Crisis, Hutchins Center Working Paper No. 62 (June 2020), at 15, *available at https://www.brookings.edu/wp-content/uploads/2020/05/wp62_duffie_v2.pdf* (''Central clearing increases the transparency of settlement risk to regulators and market participants, and in particular allows the CCP to identify concentrated positions and crowded trades, adjusting margin requirements accordingly. Central clearing also improves market safety by lowering exposure to settlement failures. . . . As depicted, settlement failures rose less in March [2020] for [U.S. Treasury] trades that were centrally cleared by FICC than for all trades involving primary dealers. A possible explanation is that central clearing reduces 'daisy-chain' failures, which occur when firm A fails to deliver a security to firm B, causing firm B to fail to firm C, and so on.'').

[382] *See generally* Albert J. Menkveld & Guillaume Vuillemey, The Economics of Central Clearing, 13 Ann. Rev. Fin. Econ. 153 (2021).

[383] *See generally* Dietrich Domanski, Leonardo Gambacorta & Cristina Picillo, Central Clearing: Trends and Current Issues, BIS Q. Rev. (Dec. 2015), *available at https://www.bis.org/publ/qtrpdf/r_qt1512g.pdf* (describing links between CCP financial risk management and systemic risk); Darrell Duffie, Ada Li & Theo Lubke, Policy Perspectives on OTC Derivatives Market Infrastructure, Fed. Res. Bank N.Y. Staff Rep. No. 424, at 9 (Mar. 2010), *available at http://www.newyorkfed.org/research/staff_reports/sr424.pdf* (''If a CCP is successful in clearing a large quantity of derivatives trades, the CCP is itself a systemically important financial institution. The failure of a CCP could suddenly expose many major market participants to losses. Any such failure, moreover, is likely to have been triggered by the failure of one or more large clearing agency participants, and therefore to occur during a period of extreme market fragility.''); Craig Pirrong, The Inefficiency of Clearing Mandates, Policy Analysis No. 655, at 11–14, 16–17, 24–26 (July 2010), *available at http://www.cato.org/pubs/pas/PA665.pdf* (stating, among other things, that ''CCPs are concentrated points of potential failure that can create their own systemic risks,'' that ''[a]t most, creation of CCPs changes the topology of the network of connections among firms, but it does not eliminate these connections,'' that clearing may lead speculators and hedgers to take larger positions, that a CCP's failure to effectively price counterparty risks may lead to moral hazard and adverse selection problems, that the main effect of clearing would be to ''redistribute losses consequent to a bankruptcy or run,'' and that clearing entities have failed or come under stress in the past, including in connection with the 1987 market break); Glenn Hubbard et al., Report of the Task Force on Financial Stability, Brookings Institution (June 2021), *available athttps://www.brookings.edu/wp-content/uploads/2021/06/financial-stability_report.pdf,* at 96 (''In short, the systemic consequences from a failure of a major CCP, or worse, multiple CCPs, would be severe. Pervasive reforms of derivatives markets following 2008 are, in effect, unfinished business; the systemic risk of CCPs has been exacerbated and left unaddressed.''); Froukelien Wendt, Central Counterparties: Addressing their Too Important to Fail Nature, IMF Working Paper No. 15/21 (Jan. 2015), *available at http://papers.ssrn.com/sol3/Delivery.cfm/wp1521.pdf* (assessing the potential channels for contagion arising from CCP interconnectedness); Manmohan Singh, Making OTC Derivatives Safe—A Fresh Look, IMF Working Paper No. 11/66 (Mar. 2011), at 5–11, *available at http://www.imf.org/external/pubs/ft/wp/2011/wp1166.pdf* (addressing factors that could lead central counterparties to be ''risk nodes'' that may threaten systemic disruption).

[384] *See* Paolo Saguato, Financial Regulation, Corporate Governance, and the Hidden Costs of Clearinghouses, 82 Ohio St. L.J. 1071, 1074–75 (2022), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3269060* (''[T]he decision to centralize risk in clearinghouses made them critical for the stability of the financial system, to the point that they are considered not only too-big-to-fail, but also too-important-to-fail institutions.'').

[385] Governance Proposing Release, *supra* note 2, at various places in Parts I, II, and III (51813–51839).

[386] Currently, ICC, LCH SA, and OCC are regulated by the CFTC. DTC, FICC, NSCC, ICC, and OCC have been designated systemically important financial market utilities. DTC is also a state member bank of the Federal Reserve System.

[387] *See* LCH, Company Structure, *available at https://www.lch.com/about-us/structure-and-governance/company-structure.*

[388] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, PFMI (Apr. 16, 2012), *available athttp://www.bis.org/publ/cpss101a.pdf.*

[389] CCA Standards Adopting Release, *supra* note 4, at 70789, 70796–97. A CPMI–IOSCO assessment report also has assessed that the Commission's rules are consistent with the PFMI principles. *See* CPMI–IOSCO, Implementation monitoring of PFMI: Assessment report for the United States—Payment systems, central securities depositories and securities settlement systems (May 31, 2019), at 2, *available at https://www.bis.org/cpmi/publ/d184.pdf* (presenting the conclusions drawn by the CPMI and IOSCO from a Level 2 assessment).

[390] For example, the OCC is a Delaware corporation. *See* OCC, Certificate of Incorporation, *available at https://www.theocc.com/Company-Information/Documents-and-Archives/OCC-Certificate-of-Incorporation.*

[391] PFMI is an international standard, and as such does not have the force of law.

TABLE 2—BOARD COMPOSITION AND INDEPENDENT DIRECTOR REQUIREMENTS OF CFTC, BOARD OF GOVERNORS, EMIR, AND CPMI–IOSCO (PFMI)

| Organization | Board composition and independence requirements |
|---|---|
| CFTC | "A derivatives clearing organization shall ensure that the composition of the governing board or board-level committee of the derivatives clearing organization includes market participants and individuals who are not executives, officers, or employees of the derivatives clearing organization or an affiliate thereof." (17 CFR 39.26). |
| Board of Governors of the Federal Reserve System. | ". . . the designated financial market utility has governance arrangements that are designed to ensure . . . [t]he board of directors includes a majority of individuals who are not executives, officers, or employees of the designated financial market utility or an affiliate of the designated financial market utility" (12 CFR 234.3(a)(2)(iv)(D)).[a] |
| European Market Infrastructure Regulation (EMIR). | "A CCP shall have a board. At least one third, but no less than two, of the members of that board shall be independent. Representatives of the clients of clearing members shall be invited to board meetings for matters relevant to Articles 38 and 39. The compensation of the independent and other non- executive members of the board shall not be linked to the business performance of the CCP" (Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012, Title IV, Article 27).<br>"'[I]ndependent member' of the board means a member of the board who has no business, family or other relationship that raises a conflict of interests regarding the CCP concerned or its controlling shareholders, its management or its clearing members, and who has had no such relationship during the five years preceding his membership of the board" (Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012, Title I, Article 2(28)). |
| CPMI–IOSCO | "[Board] members should be able to exercise objective and independent judgment. Independence from the views of management typically requires the inclusion of non-executive board members, including independent board members, as appropriate. Definitions of an independent board member vary and often are determined by local laws and regulations, but the key characteristic of independence is the ability to exercise objective, independent judgment after fair consideration of all relevant information and views and without undue influence from executives or from inappropriate external parties or interests. The precise definition of independence used by an F[inancial] M[arket] I[nfrastructure (FMI)] should be specified and publicly disclosed, and should exclude parties with significant business relationships with the FMI, cross-directorships, or controlling shareholdings, as well as employees of the organisation" (PFMI, § 3.2.10, footnotes omitted). |

[a] "The risk management standards [12 CFR 234] do not apply, however, to . . . a clearing agency registered with the Securities and Exchange Commission . . ." (12 CFR 234.1(b)).

3. Divergent Incentives of Registered Clearing Agency Stakeholders

Registered clearing agency stakeholders, such as owners and direct and indirect participants, have incentives that may not be in alignment with the interests of the broader financial markets.[392] Any such misalignment, if left unmitigated, could limit the benefits of central clearing and hinder the resilience of other financial market intermediaries and the broader financial market.[393] For example, in securities markets where all or part of a transaction may not be subject to a central clearing requirement, a single participant or a small group of participants may have a profit incentive to select bilateral clearing over central clearing [394] or seek to influence a registered clearing agency to not clear a security that would profit the participants more if the security were cleared bilaterally. Not only could such incentives limit the benefits of central clearing, but they could also reduce resilience in the broader financial market by increasing overall counterparty risk.[395] In addition, indirect participants that are not permitted to directly access clearing services have incentives to "avoid clearing and seek higher-margin trading activity through faux customization." [396] This, too, could hinder resilience in the broader financial market by increasing overall counterparty risk. Lastly, as pointed out in a BIS and IOSCO report, ". . . an FMI and its participants may generate significant negative externalities for the entire financial system and real economy if they do not adequately manage their risks." [397] To the extent these negative externalities are not adequately internalized by the registered clearing agency or otherwise mitigated, they could present systemic risks to the broader financial markets.[398] Multiple commenters agreed that the incentives of registered clearing

[392] *Cf.* Bank of England, The Bank of England's supervision of financial market infrastructures—Annual Report (Mar. 2015), at Chapter 2.1.4 ("Strong user and independent representation in [UK CCPs] governance structures should help ensure that UK CCPs focus not only on the management of microprudential risks to themselves but also on systemic risks.").

[393] *See* Sean Griffith, Governing Systemic Risk: Towards a Governance Structure for Derivatives Clearinghouses, 61 Emory L. J. 1153, 1197 (2012), *available at https://scholarlycommons.law.emory.edu/elj/vol61/iss5/3,* at 1210 ("[T]he containment of systemic risk [is] a public good. . . . Because no private party can enjoy the full benefit of eliminating systemic risk, no private party has an incentive to fully internalize the cost of doing so. As a result, no private party can simply be entrusted with the means of doing so because it is more likely to use those means to some other ends. . . . In other words, none of the commercial parties has the right incentives.").

[394] *Cf.* Treasury Market Practices Group (TMPG), Best Practice Guidance on Clearing and Settlement, at 3 (July 2019), *available at https://www.newyorkfed.org/medialibrary/Microsites/tmpg/files/CS_BestPractices_071119.pdf* (in commenting on the "potential role for expanded central clearing" in the secondary U.S. Treasuries market, the TMPG stated that "changes to market structure that have occurred have also resulted in a substantial increase, in both absolute and percentage terms, in the number of trades that clear bilaterally rather than through a central counterparty. This principally stems from the increased prevalence of P[rincipal] T[rading] F[irm] activity on I[nter]D[ealer ]B[roker] platforms.").

[395] *See* Griffith, *supra* note 393, at 1197 ("[D]ealers have a clear incentive to protect the profits they receive from the bilateral market. . .by keeping trades off of clearinghouses. Keeping trades off of clearinghouses has obvious systemic risk implications: a clearinghouse cannot contain the risk of trades that it does not clear."). Though bilateral clearing serves a well-defined function in eliminating basis risk and allowing for more precise hedging, its benefits in terms of systemic risk mitigation are more limited relative to centralized clearing.

[396] *See* Griffith, *supra* note 393, at 1200.

[397] *See* PFMI, *supra* note 388, at 11.

[398] *Cf. id.* at 128 (Noting that regulators have a role in addressing negative externalities. "[R]egulation, supervision, and oversight of an FMI are needed to . . . address negative externalities that can be associated with the FMI, and to foster financial stability generally."); Menkveld & Vuillemey, *supra* note 382, at 22 ("Network externalities create a role for regulators to coordinate investors on a socially desirable equilibrium.").

agencies and their stakeholders can diverge from the interest of the broader financial markets.[399]

Several researchers have commented that the misalignment of interests between registered clearing agency stakeholders (owners and non-owner participants, for example) weakens the effectiveness of registered clearing agencies' risk management under the existing regulatory framework.[400] Less effective risk management, in turn, hinders the resilience of individual registered clearing agencies, the clearing services market, and the broader financial markets, as well as competition among participants. However, academic literature has not coalesced around a standard model describing clearing agency governance, leaving some uncertainty about the theoretical best way to mitigate divergent incentives.[401]

As discussed more fully below, the Commission is aware of divergent incentives at some registered clearing agencies between clearing agency owners and non-owner participants, and the importance of actively addressing these divergent incentives through proactive measures to achieve sound governance and resilience. In the 2020 Staff Report on the Regulation of Clearing Agencies, Commission staff emphasized that ''robust written rules, policies, and procedures are important to clearing agency functioning, but represent only the first step in achieving resilience and compliance. To achieve real-life outcomes that help promote resilience and compliance, rules, policies, and procedures must be . . . subject to sound governance that ensures they will be executed promptly and effectively.'' [402]

(a) Divergent Incentives of Owners and Non-Owner Participants

Because registered clearing agencies mutualize risk among participants but not all participants necessarily hold an equity interest in the registered clearing agencies,[403] the incentives of clearing agency owners can differ from the incentives of clearing agency participants.[404] For example, owners have an incentive to transfer as much risk of loss as possible to non-owner participants or to lower risk management standards.[405] In such cases, the owners benefit by receiving higher profits or tying up less capital in their investment while participants are left with greater potential losses in the event of a counterparty default or non-default loss and potentially higher margin and default fund requirements.

One commenter encouraged the Commission to further study ''how different clearing agencies ownership models and organizational arrangements allocate incentives among owners and participants'' and to go further in aligning the interests of owners and non-owner participants.[406] This adopting release incorporates a comprehensive review of academic, business, and regulatory studies on clearing agency ownership models and organizational arrangements. The Commission evaluated certain clearing agency ownership alternatives in the Part IV.D. The Commission will continue to monitor the incentives of registered clearing agency owners and participants and their effects on the agencies' decision-making processes.

(b) Divergent Incentives Among Participants

In addition, different types of participants (direct versus indirect participants or large versus small participants, for example) have divergent incentives. For example, large direct participants have incentives to influence the registered clearing agency to adopt policies that would exclude smaller dealers from participating directly in the registered clearing agency.[407] Because there is only one registered clearing agency serving as a central counterparty for some asset classes, such policies could negatively affect competition among registered clearing agency participants. The diverging incentives of large direct participants compared to smaller indirect participants are mitigated by Rule 17Ad–22, which in part requires a registered clearing agency to admit participants who meet minimum standards.[408]

Large participants also have incentives to influence the registered clearing agency to adopt policies that could disproportionately allocate a risk of loss to smaller participants, such as by allowing the large participant to contribute lower quality collateral to satisfy margin or default fund requirements or by promoting margin requirements that are not commensurate with the risks and particular attributes

[399] *See, e.g.,* comments by Ian Marshall (Aug. 17, 2022) (''. . . very rarely do individuals operate outside their own interests which in the case of powerful far reaching institutions such as clearing agencies, produces the potential to risk the well being of members, affiliated parties, and market stability. . . .''); Chris Barnard (Sept. 9, 2022) (''. . . conflicts of interest inherent in clearing agency relationships could substantially harm the security-based swaps or wider financial market.'').

[400] *See* Saguato, *supra* note 384, at 5, 13 (stating that ''effective risk management in financial institutions can be achieved only if the final risk bearers have a voice in the governance of the firm'' and that ''the existing regulatory framework underestimates and does not address the misaligned incentives that spill from the agency costs of the separation of risk and control and from the member-shareholder divide . . .''); Hester Peirce, Derivatives Clearinghouses: Clearing the Way to Failure, 64 Clev. St. L. Rev. 589 (2016), *available at https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=3915&context=clevstlrev* (arguing that clearing members must play a central role in risk management); Craig Pirrong, The Economics of Central Clearing: Theory and Practice, ISDA Discussion Papers Series No. 1 (May 2011), at 3, *available at https://www.isda.org/a/yiEDE/isdadiscussion-ccp-pirrong.pdf* (''CCPs should be organized so as to align the control of risks with those who bear the consequences of risk management decisions.'').

[401] *See* Menkveld & Vuillemey, *supra* note 382, at 21 (''While the literature on central clearing has made significant progress over the past ten years, a number of important questions remain open. On the theoretical front, there is still no standard model of . . . [CCP] governance.'').

[402] SEC Division of Trading and Markets and Office of Compliance Inspections and Examinations, Staff Report on the Regulation of Clearing Agencies (Oct. 1, 2020) (''Staff Report on Clearing Agencies''), *available athttps://www.sec.gov/files/regulation-clearing-agencies-100120.pdf,* at 25.

[403] For example, OCC, ICC, and LCH SA are not owned by participants.

[404] *See* Saguato, *supra* note 384, at 1099 (''This new agency conflict that stems from the separation of risk and control and from the 'member-shareholder divide' misaligns the incentives of the clearinghouse from those of its members . . .''). This specific agency conflict is less of a concern in cases where clearing agency participants own shares of the clearing agency, because there is less separation of risk and control. For example, DTC, NSCC, and FICC operate under a utility model, where the participants own shares of the parent company, DTCC.

[405] *See* Menkveld & Vuillemey, *supra* note 382, at 20 (noting that because participants are a ''captive clientele,'' clearing agencies could be incentivized to relax risk management standards); Saguato, *supra* note 384, at 1099, 1102. However, it is possible that a captive clientele could also incentivize a clearing agency to increase its risk management standards if there is participant representation in the governance structure.

[406] *See* Saguato at 2.

[407] *See* Kristin N. Johnson, Commentary on the Abraham L. Pomerantz Lecture: Clearinghouse Governance: Moving Beyond Cosmetic Reform, 77 Brook. L. Rev. 2, 698 (2012), *available at https://brooklynworks.brooklaw.edu/blr/vol77/iss2/5* (''Large dealers have incentives to limit smaller dealers' access to clearinghouse membership. When large dealers act as brokers for the smaller nonmember dealers, the larger dealers earn revenues for executing transactions for dealers who are nonmembers and ineligible for membership. If eligibility standards preclude smaller dealers from gaining the full benefits of membership, then small dealers who desire to execute transactions must seek the assistance of the larger dealers who are members. Thus, large dealers have commercial incentives to ensure that smaller dealers remain ineligible for membership.''); Griffith, *supra* note 393, at 1197 (''The major dealers may also use their influence over clearinghouses to protect [their] trading profits, using the clearinghouse as a means of increasing their market share and excluding competitors.''). Multiple commenters agreed that large participants stand to gain from anti-competitive conduct against smaller participants (*See* Better Markets at 9–10; IDTA at 3).

[408] *See* 17 CFR 240.17Ad–22(b)(5) through (b)(7), and (e)(18).

of each participant's specific products, portfolio, and market. The diverging incentives of large participants compared to smaller direct participants are also mitigated by Rule 17Ad–22, which in part requires a registered clearing agency to establish minimum margin and liquidity requirements.[409] By establishing minimum margin and liquidity requirements, Rule 17Ad–22 reduces a large participant's ability to obtain or maintain a competitive advantage through activities such as providing lower quality collateral or promoting margin requirements that are not commensurate with the risks and particular attributes of each participant's specific products, portfolio, and market.

4. Current Governance Practices

Registered clearing agencies must operate in compliance with Rule 17Ad–22, though they may vary in the particular ways they achieve such compliance. Some variation in practices across registered clearing agencies derives from the products they clear and the markets they serve.

An overview of current practices at the six operating registered clearing agencies is set forth below and includes discussion of registered clearing agency boards' policies and procedures related to the composition of the board and board committees, conflicts of interests involving directors and senior managers, the obligations of the board regarding overseeing relationships with service providers for core services, and consideration of stakeholders' views. This discussion is based on the Commission's general understanding of current practices as of the date of this release and reflects the Commission's experience supervising registered clearing agencies.

(a) Current Practices Regarding Board Composition

Each registered clearing agency has a board that governs its operations and supervises senior management. Exchange Act section 17A(b)(3)(C) prohibits a clearing agency from registering unless the Commission finds that ''the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. (The Commission may determine that the representation of participants is fair if they are afforded a reasonable opportunity to acquire voting stock of the clearing agency, directly or indirectly, in reasonable proportion to their use of such clearing agency.).'' [410] In addition, Rule 17Ad–252(e)(2) requires governance arrangements that support the objectives of owners and participants and consider the interests of other relevant stakeholders.

(1) Independent Directors

Registered clearing agencies currently use various definitions of *independence* and *independent director.* Some clearing agencies do not use the term *independent* to classify their board members; the closest equivalent to independent directors at these agencies is *non-participant directors* at the three DTCC agencies and *public directors* at OCC. In addition, current practices vary widely regarding the board and board committee requirements for independent directors (as the term is currently used by registered clearing agencies). For example, registered clearing agencies' existing requirements for the minimum percentage of independent directors on the board ranges from 11 percent at LCH SA [411] to 25 percent at OCC [412] to 56 percent at ICC.[413] The three DTCC clearing agencies require some *non-participant directors,* but do not specify a required minimum number or percentage. Table 3 summarizes the general board composition and independent director requirements of each operating registered clearing agency.

TABLE 3—BOARD COMPOSITION AND INDEPENDENT DIRECTOR REQUIREMENTS OF OPERATING REGISTERED CLEARING AGENCIES

| Clearing agency | Board composition requirements | Definition of independent director |
|---|---|---|
| DTC, FICC, and NSCC (all use the same board as DTCC). | 23 directors: 1 non-executive Chair, 1 DTCC executive (DTCC's Pres. & CEO), 13 participant-owner directors, 6 non-participant directors, 1 director designated by DTCC preferred stock shareholder ICE, 1 director designated by DTCC preferred stock shareholder FINRA. (*See https://www.dtcc.com/about/leadership.*). | A non-participant director is ''an individual who is not an officer, employee, or member of the Board of Directors of a DTC participant or FICC/NSCC member, including Sponsored Members, but excluding Limited Members, as those terms are defined in the relevant Rulebooks.'' (See DTCC Board of Directors Charter.[a]) |
| OCC | 20 directors: 1 management director (Chair), 5 public directors, 9 participant directors, 5 exchange directors. (*See https://www.theocc.com/Company-Information/Board-of-Directors;* OCC Board Charter.[b]). | A public director ''lacks material relationships to OCC, OCC's Management Committee, and other directors'' and is ''not affiliated with any national securities exchange, national securities association, designated contract market, futures commission merchant, or broker or dealer in securities'' (OCC Board Charter at 4, 6). ''A substantial portion of directors shall be 'independent' of OCC and OCC's management as defined by applicable regulatory requirements and the judgment of the Board'' (OCC Board Charter at 5). |

[409] *See* 17 CFR 240.17Ad–22(e)(5) and (e)(6). One commenter disagreed that Rule 17Ad–22 has ''solved the problem of market dominance'' (Better Markets, at 16). The Commission agrees with the commenter that although Rule 17Ad–22 mitigated the problem of market dominance, it did not eliminate the problem.

[410] 15 U.S.C. 78q–1(b)(3)(C).

[411] LCH's requirement for the board of director is to have between 3 to 18 members. The board composition rules state that ''at least two of the Independent Directors shall . . .'', suggesting that there must be at least 2 independent directors, which represents 11% of an 18-member board.

[412] OCC's requirement for the board of directors is to have 20 members, 5 of whom (25%) should be ''public directors.''

[413] ICC's requirement for the board of directors is to have 9 members, 5 of whom (55.6%) must be independent.

TABLE 3—BOARD COMPOSITION AND INDEPENDENT DIRECTOR REQUIREMENTS OF OPERATING REGISTERED CLEARING AGENCIES—Continued

| Clearing agency | Board composition requirements | Definition of independent director |
|---|---|---|
| ICE Clear Credit ..... | 9 directors (a/k/a Board of Managers): at least 5 independent directors and 2 management directors. 5 directors elected by ICE US Holding Company L.P. (3 of 5 are independent and the remaining 2 are from ICE management). The Risk Committee designates four nominees (two must be independent and two may be non-independent). (*See* ICC Regulation and Governance Fact Sheet[c] at 2.). | An independent director must satisfy the independence requirements in the NYSE Listed Company Manual.[d] An independent director also may not (among other things): • ''have any material relationships with the Company and its subsidiaries.'' • be affiliated with a Member Organization or, within the last year, (a) be employed by a Member Organization, (b) have an immediate family member who was an executive officer of a Member Organization, or (c) have received from any Member Organization more than $100,000 per year in direct compensation. (*See* ICC Independence Policy.[e]) |
| LCH SA ..... | 3 to 18 directors (currently 11 with 5 independent): ''the board shall be composed of the following categories of Directors:'' an independent Chair, independent directors, executive directors, a director proposed by Euronext, user directors, and a director representing London Stock Exchange Group plc. (*See https://www.lch.com/about-us/structure-and-governance/board-directors-0*; LCH SA Terms of Reference of the Board[f] at 3.). | Independent director ''means an independent director, who satisfies applicable Regulatory Requirements regarding independent directors and who is appointed in accordance with the Nomination Committee terms of reference'' (LCH SA Terms of Reference of the Board at 2). |

[a] DTCC, Board of Directors Charter (June 2023), *available at https://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Mission-and-Charter.pdf.* DTCC stated that ''a definition [of what currently constitutes an independent director] may in fact be found under the definition of a 'non-participant director' '' DTCC at 4.

[b] OCC, Board of Directors Charter and Corporate Governance Principles (May 26, 2022), *available at https://www.theocc.com/getmedia/99ed48a4-aa44-45ac-8dee-9399b479a1c8/board_of_directors_charter.pdf.*

[c] ICE, ICC Regulation and Governance Fact Sheet, *available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Regulation_and_Governance.pdf.*

[d] *See* Section 303.A.02 of the NYSE Listed Company Manual, *available at https://nyseguide.srorules.com/listed-company-manual* (''No director qualifies as 'independent' unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).'' The independence requirements also list five situations that would preclude a director from being considered independent).

[e] ICE, Independence Policy of the Board of Directors of Intercontinental Exchange, Inc., *available athttps://s2.q4cdn.com/154085107/files/doc_downloads/governance_docs/ICE-Independence-Policy.pdf.*

[f] LCH SA, Terms of Reference of the Board (Sept. 9, 2020), *available at https://www.lch.com/system/files/media_root/LCH%20SA%20Boards%20Terms%20of%20Reference.pdf.*

(2) Nominating Committee

Five of the six operating registered clearing agency boards have a nominating committee or a committee that serves a similar function. Current practices regarding the minimum level of independent directors on the nominating committee vary widely. DTC, NSCC, and FICC require that the nominating committee be composed entirely of ''non-management'' directors; LCH SA requires that its nomination committee include an independent chair, at least two independent directors (as defined by LCH SA), and one user director; and OCC requires that the committee be chaired by a ''public director'' and include at least one exchange director and at least one member director.[414] As stated previously, the definition of independent director varies across registered clearing agencies.[415]

All six registered clearing agency boards have fitness standards for directors, processes for evaluating directors, and processes for evaluating director independence. The fitness standards and processes for evaluating directors vary across registered clearing agencies. For example, OCC's nominating committee is required to ''identify, screen and review individuals qualified to be elected or appointed [to the Board] after consultation with the Chairman,'' [416] whereas DTCC's governance committee, which serves as the nominating committee for DTC, NSCC, and FICC, is not required to consult with the chairman. Instead, DTCC's governance committee ''considers possible nominations on its own initiative and invites suggestions from all participants of each of DTCC's clearing and depository subsidiaries. [ ] The Governance Committee may also use a professional director search consultant to assist in identifying candidates for the non-participant Board positions.'' [417] ICC, which does not have a nominating committee, uses its risk committee to nominate four directors. ICC's direct parent company, ICE US Holding Company L.P., decides whether to elect the four nominees from the risk committee, and then appoints another five directors on their own.[418]

[414] *See* DTCC Governance Committee Charter 1 (Feb. 2020), *available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/Governance-Committee-Charter.pdf* (''All members of the Committee shall be members of the Board who are not employed by DTCC ('non-management' directors).''); LCH SA Terms of Reference of the Nomination Committee of the Board of Directors (Sept. 9, 2020), *available at https://www.lch.com/system/files/media_root/LCH%20SA%20-%20NomCom%20ToRs.pdf* (''[The] membership shall comprise the Chairman, at least two Independent Directors, one User Director and the LSEG Director. The size of the Committee . . . for the current time, will comprise four to six directors.''); OCC Governance and Nominating Committee Charter 1 (Sept. 22, 2021), *available at https://www.theocc.com/getmedia/483ac739-0d43-46d2-a1ca-7ed38094975c/governance_nominating_charter.pdf* (''The Committee will be composed of at least one Public Director, one Exchange Director, and one Member Director. No Management Director will be a member of the Committee. [ ] The Committee Chair will be designated by the Board from among the Public Director Committee members.'').

[415] *See supra* Table 3 and accompanying text.

[416] OCC Governance and Nominating Committee Charter, *supra* note 414, at 3.

[417] DTCC, Procedure for the Annual Nomination and Election of the Board of Directors (Feb. 11, 2021), at 2, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Election-Procedure.pdf.*

[418] ICC, ICE Clear Credit Regulation and Governance (Apr. 2022), at 2, *available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Regulation_and_Governance.pdf.*

(3) Risk Management Committee

Five of the six operating registered clearing agencies have RMCs of the board.[419] The sixth registered clearing agency, ICC, has an RMC but has not identified it as a board committee. All six registered clearing agencies include representatives from clearing participants on the RMC, though only three registered clearing agencies require it.[420] Three of the six operating registered clearing agencies require the membership of the RMC to be re-evaluated annually.[421]

(b) Current Practices Regarding Conflicts of Interest Involving Directors or Senior Managers

The boards of all six operating registered clearing agencies have policies and procedures in place to identify and mitigate conflicts of interest involving directors or senior managers. All six boards also require directors to notify the clearing agency if a conflict of interest arises.

(c) Current Practices Regarding Management of Risks From Relationships With Service Providers for Core Services

The Commission already requires registered clearing agencies to manage risks from operations,[422] which can include risks associated with relationships with service providers.[423] The Commission is aware that at least some registered clearing agencies periodically inform their boards regarding risk management associated with service providers for core services.

The Commission also requires that SCI entities—including registered clearing agencies—conduct risk assessments of ''SCI systems'' at least once per year in accordance with Regulation SCI and report the findings to senior management and the board of directors.[424] Insofar as service providers for core services are the providers of SCI systems, each registered clearing agency board likely already has written policies and procedures reasonably designed to, among other things, require senior management to: (1) evaluate and document the risks related to service provider relationships and whether the risks can be managed in a manner consistent with the registered clearing agency's risk management framework, (2) establish policies and procedures that govern service provider relationships, (3) monitor service provider relationships on an ongoing basis for deterioration in performance, change in risks, or other material issues, and (4) report all new service provider relationships, related policies and procedures, and ongoing monitoring to the board of directors.[425]

(d) Current Practices Regarding Board Consideration of Stakeholder Viewpoints

Currently, each covered clearing agency is required to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide governance arrangements that consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.[426] The Commission understands that registered clearing agency boards currently use both formal and informal channels to solicit, receive, and consider the viewpoints of participants and other relevant stakeholders.[427] Multiple commenters confirmed, for example, that registered clearing agencies are already required to solicit stakeholder viewpoints every time they propose a rule change as a self-regulatory organization (*i.e.,* pursuant to Rule 19b–4) or an advance notice requirement as a SIFMU.[428] Registered clearing agency participants acknowledge that their ability to offer viewpoints has yielded positive but mixed results.[429]

Regarding the proposed requirement that registered clearing agencies document the consideration of stakeholder views, one commenter stated that ''it is already standard practice for clearing agencies to create and maintain documentation of their consideration of market participants' viewpoints.'' [430]

### *C. Consideration of Benefits and Costs as Well as the Effects on Efficiency, Competition, and Capital Formation*

The final rules are designed to facilitate the primary goal the Commission sought to achieve as articulated in the proposing release, namely: improving governance of registered clearing agencies by addressing the divergent incentives among the agencies' owners and participants, thereby improving the efficiency and effectiveness of the agencies' risk management and efforts to maintain fair, orderly, and efficient securities markets.

The discussion below sets forth the potential economic effects stemming from the final rules, including the effects on efficiency, competition, and capital formation.

The benefits and costs discussed in this part are relative to the economic baseline discussed earlier, which includes registered clearing agencies' current practices. In some instances, the final rules reflect what the Commission

[419] DTC, NSC, FICC, OCC, and LCH SA.

[420] OCC, ICC, and LCH SA each require that the risk committee include representatives from participants. Article 28 of EMIR requires that a clearing agency have a risk committee that includes representatives of its clearing members. *See* EMIR, *supra* note 56, at art. 28(1).

[421] OCC, ICC, and LCH SA.

[422] *See* 17 CFR 240.17Ad–22(d)(4) and (e)(17).

[423] In addition, DTC, as a state member bank of the Federal Reserve System, has received guidance from the Board of Governors of the Federal Reserve System regarding managing service provider risks. *See* SR Letter 13–19/CA Letter 13–21, Guidance on Managing Outsourcing Risk (Dec. 5, 2013, rev. Feb. 26, 2021). The Board of Governors of the Federal Reserve System, jointly with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency, adopted updated guidance for banking organizations in 2023 regarding the management of risks arising from third-party relationships. *See* 88 FR 37920 (June 9, 2023).

[424] *See* 17 CFR 242.1000 through 1007.

[425] *See* Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72251 (Dec. 5, 2014) (''Regulation SCI Adopting Release''), at 77276 (noting that ''The Commission agrees with the comment that an SCI entity should be responsible for managing its relationship with third parties operating systems on behalf of the SCI entity through due diligence, contract terms, and monitoring of third party performance. [. . .] The Commission believes that it would be appropriate for an SCI entity to evaluate the challenges associated with oversight of third-party vendors that provide or support its applicable systems subject to Regulation SCI. If an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.'').

[426] *See* 17 CFR 240.17Ad–22(e)(2)(vi).

[427] *See, e.g.,* CCP12, at 9; DTCC, at 12; LSEG, at 15; OCC, at 14; OCC, Order Approving Proposed Rule Change, Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500, 5508 (Jan. 30, 2020) (''OCC also describes the formal and informal mechanisms that OCC employs to solicit feedback from Clearing Members and other interested stakeholders, including its Financial Risk Advisory Committee, Operations Roundtable, multiple letters and open calls with Clearing Members and other interested stakeholders, and routine in-person meetings with trade groups and individual firms.''); *Cf.* J.P. Morgan et al., A Path Forward for CCP Resilience, Recovery and Resolution (Mar. 10, 2020), *available at https://www.jpmorgan.com/content/dam/jpm/cib/complex/content/news/a-path-forward-for-ccp-resilience-recovery-and-resolution/pdf-0.pdf* (''[C]learing participants have provided diverse perspectives and detailed feedback to CCPs and regulators through individual firm and industry association position papers, targeted comment letters, and participation in regulatory and industry-sponsored forums on a global scale.'').

[428] *See, e.g.,* CCP12 at 9; DTCC at 13; ICE at 6–7; OCC at 15.

[429] *See, e.g.,* J.P. Morgan et al., *supra* note 427, at 1 (explaining that ''[w]hile CCPs and the regulatory community have taken significant steps to address the feedback received, there remain outstanding issues that require additional attention'' and recommending ''[e]nhancing governance practices to obtain and address input from a broader array of market participants on relevant risk issues'' to enhance CCP resilience).

[430] CCP12 at 10.

understands to be current practices at many registered clearing agencies. To the extent that a registered clearing agency's current practices could reasonably be considered in compliance with part of a final rule, the registered clearing agency, its participants, and the broader market will have already absorbed some of the benefits of the final rule. The final rules codify the current best practices and ensure that every registered clearing agency is required to continue including these elements in its governance standards.[431] By promoting better governance and enhanced risk management across all registered clearing agencies, the final rules will lead to efficiency improvements in the clearing agency market and the broader financial market. More resilient clearing agencies could ultimately contribute to the stability of the U.S. financial system.

The final rules will lead to certain additional costs for registered clearing agencies. These costs will vary depending on the scope of a registered clearing agency's current practices as it compares to the final rule's requirements and the size of the clearing agency, among other factors. For example, we anticipate minimal compliance costs to the registered clearing agencies where current practices could reasonably be considered in compliance with the final rules.[432] In these cases, registered clearing agencies could still potentially face indirect costs associated with the limitations on discretion that would result from the rules, including costs related to limiting a registered clearing agency's flexibility to choose different governance arrangements.[433]

The compliance costs will be higher for the registered clearing agencies where their current practices differ from the final rules' requirements. In these cases, many of the final rules could result in a registered clearing agency needing to amend its bylaws, rulebook, or other governance documents. Because registered clearing agencies are SROs, any such amendments that constitute rule changes would be subject to Commission review pursuant to Rule 19b–4. The final rules could also cause a registered clearing agency to make different business decisions, such as hiring and capital expenditure decisions, which would not be subject to the same Commission review process. These behavioral changes are difficult to predict and therefore hard to quantify, in part because of the number of assumptions that would be needed to forecast how registered clearing agencies will respond to the final rules.

The costs discussed in this part will be borne by registered clearing agencies and their participants. For registered clearing agencies owned by participants, all the costs will ultimately be passed on to these participants because they are residual beneficiaries of the clearing agency. For registered clearing agencies not owned by participants, the level of pass-through will depend upon a number of factors, including the lack of competition among clearing agencies. In both cases, the participants will likely pass through some of those costs to their customers, depending on factors such as the customers' sensitivities to costs, the amount of competition between participants for customers, and regulatory requirements.

The expected costs to implement the final rules are anticipated to be sufficiently small relative to the size of each registered clearing agency that the costs will not have a material effect on: (1) competition among the existing registered clearing agencies or on a new entrant's ability to enter the market; (2) capital formation, including registered clearing agencies' ability to raise capital; and (3) the efficiency of registered clearing agencies or their participants.

1. Economic Considerations for Final Rule Regarding Board Composition

As discussed in more detail above, final Rules 17Ad–25(b), (e), and (f) require that a majority of the board (or 34 percent, if a majority of the voting interests are directly or indirectly held by participants) be independent directors (as determined by the nominating committee and precluding certain circumstances that affect independence), establish minimum independent director requirements for the composition of certain board committees, and identify circumstances that would exclude a director from being an independent director.[434]

To the extent an operating registered clearing agency determines that its current board meets the minimum requirements for independent directors on the board and board committees, the final rule will not directly affect the effectiveness of the registered clearing agency's governance. To the same extent, the final rules will also have no direct effect on the management of divergent interests between owners and participants, among various types of participants, and between registered clearing agency stakeholders and the broader financial markets.

To the extent operating registered clearing agencies need to change the composition of their boards or board committees to meet the minimum requirements, the final rule will help promote more effective governance by providing impartial perspectives and helping mitigate the effect of the divergent interests between owners and participants, among various types of participants, and between registered clearing agency stakeholders and the broader financial markets. More effective governance will improve the effectiveness of a registered clearing agency's risk management practices, which will promote resilience at individual registered clearing agencies and in the broader financial markets.[435] For example, more effectively managing divergent interests will help the registered clearing agency better internalize the costs of participant defaults and non-default losses which will mitigate a registered clearing agency's incentive to underinvest in risk management services such as liquidity arrangements and risk modeling. The final rules will also help registered clearing agencies ensure that an appropriate risk-based margin system is in place.

One commenter stated that ''lopsided representation'' by larger participants on a governing body will ''enhance the market strength of the largest firms at the expense of a more competitive and diverse market environment.'' [436] Given that the cleared derivatives market is an imperfect substitute for uncleared derivatives, some commentators also stated that large dealers may have an incentive to protect economic rents and therefore may urge boards to adopt policies that restrict the classes or

[431] One commenter stated, ''. . . the codification of [including participant representatives on the risk management committee] into a requirement will be beneficial, as it will ensure that registered clearing agencies will be obligated to meet what is currently akin to a 'best practice' '' (Barclays et al. at 2).

[432] For these registered clearing agencies, the compliance costs would require a small amount of resources, which would be used to review the clearing agency's policies and procedures in response to the adoption.

[433] For example, to the extent that registered clearing agencies have boards with a majority of independent directors and value their current ability to have less than a majority of independent directors on the board of directors, they may incur additional costs because they will lose the option to do so.

[434] *See supra* Part II.A.1 (discussing Rules 17Ad–25(b), (e), and (f)).

[435] *See* Paolo Saguato, The Unfinished Business of Regulating Clearinghouses, 2020 Colum. Bus. L. Rev. 449, 488 (2020), *available at https://journals.library.columbia.edu/index.php/CBLR/article/view/7219/3838* (''The agency costs between clearinghouses' shareholders and members (the former participating in the profits of the business, and the latter bearing its final costs) increase the moral hazard of these institutions and threaten clearinghouses' systemic resilience.''); Saguato, *supra* note 384.

[436] IDTA at 3.

volume of transactions that may use clearinghouse platforms.[437] Better management of divergent interests under the final rules will improve the ability of indirect participants to compete with direct participants of the registered clearing agency by, for example, providing indirect participants with enhanced access to registered clearing agency boards.

Some academic literature on corporate governance could be interpreted to suggest that, under the final definition of *independent director* and the minimum requirements for independent directors on the board and board committees, divergent interests [438] may continue to adversely affect governance, because independent directors in closely held companies may cede to the interests of controlling shareholders unless they are affirmatively incentivized to protect the interests of one or more stakeholder groups.[439] In this context, one paper suggests that although independent directors may not be an ultimate solution to the agency problem for all companies (especially when there is concentrated ownership), independent directors can contribute to effective corporate governance if: (1) their explicit purpose is to ''prevent minority expropriation at the hands of the block-holders,'' (2) there is a strong regulation and enforcement regime, and (3) the nomination procedure and the design of incentives guarantee the independent director is accountable to a specific constituency other than controlling shareholders.[440] Another author argues that including independent directors in the governance process provides a roadmap for effective corporate governance, but does not guarantee results in terms of favoritism and objectivity.[441] While these studies on the benefits of independent directors offer mixed results and note that independence alone is unlikely to be sufficient to further motivate a director to act solely in the public interest,[442] the studies also note that director independence, particularly when complemented with other governance requirements, may help mitigate divergent incentives.

Accordingly, the Commission anticipates that the final independence rules will help mitigate divergent incentives when complemented with, among other things: (1) existing governance rules that emphasize the registered clearing agency's responsibility to owners, participants and other stakeholders,[443] and (2) Commission enforcement of securities regulations.

In addition, standardizing the definition of *independent director* will improve efficiency by reducing economic frictions and search costs related to monitoring by stakeholders.

The Commission is aware of three primary costs associated with the final rules regarding the composition of the board. First, the final rules will cause registered clearing agency boards to expend resources memorializing information that has been gathered for consideration in determining each director's independence, and preserving the records of the determination. The Commission estimates that each operating registered clearing agency will incur a one-time burden of approximately $22,403 [444] to comply with Rules 17Ad–25(b), (e), and (f). Registered clearing agencies will also expend future resources to repeat the above process of memorializing information and documenting a determination, possibly twice a year. The Commission estimates that each operating registered clearing agency will incur an annual, recurring burden of approximately $44,806 [445] to comply with Rules 17Ad–25(b), (e), and (f).

Second, registered clearing agencies may need to add independent directors to the board, either by replacing directors or increasing the board size.[446] As mentioned earlier, approaches to defining independence for directors vary across registered clearing agencies. Thus, to the extent that a registered clearing agency's definition of an ''independent director'' conflicts with the final rules, including the prohibitions in Rule 17Ad–25(f), a registered clearing agency currently reporting a majority of its directors as independent (or 34 percent, if a majority of the voting interests are directly or indirectly held by participants) on its board may need to replace directors to comply with the rule requirements.[447]

Adding independent directors would require a registered clearing agency to expend resources conducting a search for new directors. The costs incurred by the registered clearing agency may vary based on whether it conducts its own search or retains an outside consultant.

[437] *See* Johnson, *supra* note 407, at 698–700.

[438] The divergent interests referred to here are those between owners and participants, among various types of participants, and between registered clearing agency stakeholders and the broader financial markets.

[439] *See, e.g.,* Lucian A. Bebchuk & Assaf Hamdani, Independent Directors and Controlling Shareholders, 165 Univ. Pa. L. Rev. 1271, 1274 (2017), *available at https://scholarship.law.upenn.edu/penn_law_review/vol165/iss6/1/* (taking the position that independent directors have incentives to go along with controlling shareholders' wishes because the directors depend on the controlling shareholders for election and retention, and that the best way to help ensure an independent director does not capitulate to controlling shareholders' or management's interests is to help ensure the independent director is accountable to (*i.e.,* nominated by) another group of stakeholders); Donald C. Clarke, Three Concepts of the Independent Director, 32 Del. J. Corp. L. 73 (2007), *available at https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=1045&context=faculty_publications,* at 83 (''In the real world, of course, any director without security of tenure will, in the absence of counterincentives and assuming that the position is desirable, tend to be accountable to whoever was responsible for appointing her.''). *See also id.* at 85 (explaining that even if directors were independent of shareholders, ''[T]he role of the independent direct [as] one who is independent of profit-seeking shareholders as well as independent of management has not, however, found fertile soil in American corporate law scholarship or practice. The dominant view has been that directors who are responsible to many constituencies are in effect responsible to none . . .'').

[440] *See* Maria Gutierrez & Maribel Saez, Deconstructing Independent Directors, 13 J. Corp. L. Stud. 63, 90 (2013).

[441] *See* Bruce Dravis, Director Independence and the Governance Process (Aug. 14, 2018), *available at https://www.americanbar.org/groups/business_law/publications/blt/2018/08/05_dravis/.*

[442] *See* Clarke, *supra* note 439, at 82–83 (''If one is to rely on NMDs [Non-Management Director's] to exercise their voting power in favor of compliance with external standards, then there needs to be some reason for believing that NMDs will be more likely to do so than non-NMDs. Both kinds of directors can be subject to sanctions for voting to violate clear legal obligations. If the purpose is to encourage corporations to act in accordance with principles that do not constitute legal obligations (for example, ''maximize local employment''), then it is unlikely that NMDs elected by, and accountable to, profit-maximizing shareholders will produce this result. A director serving the ''public interest'' should arguably be independent of everyone—dominant shareholders, management, and indeed all those who have an interest in the company—and follow only the dictates of her conscience. Assuming accountability to be a good thing, however, it is hard to see how such a director could properly be made accountable. In the real world, of course, any director without security of tenure will, in the absence of counterincentives and assuming that the position is desirable, tend to be accountable to whoever was responsible for appointing her.'').

[443] *See, e.g.,* Rule 17Ad–22(e)(2).

[444] This figure is based on the analysis in *infra* Part V.A. The per-hour costs are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, modified by Commission staff to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. *See* SIFMA, Management and Professional Earnings in the Securities Industry—2013 (Oct. 7, 2013).

[445] This figure is based on the analysis in *infra* Part V.A. The per-hour costs are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[446] Alternatively, registered clearing agencies might achieve compliance by reducing the board size and eliminating a sufficient number of non-independent directors.

[447] On the other hand, a registered clearing agency that does not report a majority independent board (or 34 percent, if a majority of the voting interests are directly or indirectly held by participants) could determine that its current slate of directors already satisfies the independence requirements in the adopted rules.

The Commission estimates that retaining a recruitment specialist to secure an independent director could cost approximately $100,000 per director.[448]

Third, to the extent that non-independent directors tend to have more relevant knowledge and experience than independent directors do, requiring that a majority of directors (or 34 percent, if a majority of the voting interests are directly or indirectly held by participants) be independent could reduce the depth or breadth of relevant expertise that can be brought to registered clearing agency boards. A reduced level of combined experience on a registered clearing agency board might impair registered clearing agency efficiency in the near term. However, this potential cost is mitigated under the final rules by allowing eligible participant employees to serve as independent directors.[449] One commenter stated that allowing for the potential inclusion of participant employees as independent directors had several benefits, including industry expertise, strong alignment with the risk management and operational integrity of the registered clearing agency, and diverse perspectives.[450]

One commenter stated that adopting the proposed definition of *independent director* would impose costs on registered clearing agencies that are dual registered with other regulatory bodies because other regulatory bodies have different definitions of independence and it would require extra resources to evaluate a nominee's independence under different standards from multiple regulatory entities. As explained in Part II.A.3, any additional costs from evaluating independence under multiple regulatory regimes are insignificant.

[448] The Commission is basing this estimate on a report by The Good Search, which explains that their average retainer for an executive search is between $85,000 and $100,000, and the fee charged by large retained executive search firms usually starts at $100,000. *See* The Good Search, Retained Search Fees, *available at https://tgsus.com/executive-search-blog/executive-search-fees-search-firm-pricing.* The $100,000 estimate serves as a reasonable proxy for the amount a recruitment firm might charge to conduct a national search for an independent director. The Commission did not receive any comments providing an estimated cost of finding an independent director.

[449] To be considered independent directors, participant employees must satisfy the requirements of Rule 17Ad–25, as explained in *supra* Part II.A.

[450] *See* DTCC at 4. *See also* Saguato at 3.

2. Economic Considerations for Final Rules Regarding the Nominating Committee

As discussed in more detail above, Rule 17Ad–25(c) establishes minimum requirements for nominating committees, including a minimum composition requirement, fitness standards for serving on the board, and a documented process for evaluating board nominees, including those who would meet the Commission's independence criteria.[451]

Given that five of the six operating registered clearing agencies already have nominating committees (or a committee that serves a similar function), the primary benefit of Rule 17Ad–25(c) is to increase the number of independent directors on existing nominating committees. Insofar as a lack of independent directors on a registered clearing agency's nominating committee has prevented the registered clearing agency from having a fairer representation of its shareholders and participants in the selection of its directors and the administration of its affairs, Rule 17Ad–25(c) will help the registered clearing agency better meet section 17A's fair representation requirements.

One commenter expressed concern that the additional burdens Rule 17Ad–25(c) placed on independent directors could discourage qualified individuals from being willing to serve on registered clearing agency boards.[452] The Commission does not think such a potential cost is significant, because several registered clearing agencies already have nominating committees that have a majority of independent directors, meaning that they have been able to find qualified directors. In addition, to the extent the new rules increase the amount of work done by independent directors, the burden on each independent director can be reduced by, for example, including more independent directors on the board to handle the increased workload.

Rule 17Ad–25(c) will cause registered clearing agency boards to expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. The Commission estimates that each operating registered clearing agency will incur a one-time burden of approximately $38,590[453] to comply with Rule 17Ad–25(c). Registered clearing agencies will also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised policies and procedures. The Commission estimates that each operating registered clearing agency will incur an annual, recurring burden of approximately $13,110[454] to comply with Rule 17Ad–25(c).

[451] *See supra* Part II.B.1 (discussing Rule 17Ad–25(c)).

[452] *See* ICE at 3.

[453] This figure is based on the analysis in *infra* Part V.B. The per-hour costs are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

3. Economic Considerations for Final Rules Regarding the Risk Management Committee

As discussed in more detail above, Rule 17Ad–25(d) requires each registered clearing agency to establish a RMC (or committees) of the board and establish minimum requirements for the composition, reconstitution, and function of such RMCs.[455] Based on the Commission staff's review of relevant governance documents, the Commission understands that many registered clearing agencies currently have written governance arrangements that largely conform to the requirements for RMCs in Rule 17Ad–25(d). Those registered clearing agencies' governance documents and related policies and procedures will likely need minimal modifications. To the extent that a registered clearing agency's existing governance documents and related policies and procedures are already in compliance with the final rules, the incremental compliance costs associated with the rule will be minimal and the benefits of the rule will already be incorporated by market participants.

To the extent that a registered clearing agency's existing governance documents and related policies and procedures do not meet the requirements set out in the final rules, requiring that the RMC be a board committee will help make the board's oversight of risk management more effective by helping to ensure that a board committee is focused on risk management and by allowing the RMC to have delegated authority from the board. In addition, requiring that registered clearing agencies re-evaluate the RMC's membership annually will help prevent stagnation of RMC membership and stagnant viewpoints about risk management, while maintaining the registered clearing agency's discretion to preserve expertise on the RMC. Giving risk management a consistently higher priority and annually re-evaluating the RMC's

[454] This figure is based on the analysis in *infra* Part V.B. The per hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[455] *See supra* Part II.C.1 (discussing Rule 17Ad–25(d)).

membership will help registered clearing agencies act to limit their risk of failure.

Rule 17Ad–25(d) will cause registered clearing agency boards to expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. The Commission estimates that each operating registered clearing agency will incur a one-time burden of approximately $3,859 [456] to comply with Rule 17Ad–25(d). The Commission acknowledges that the cost may be higher for registered clearing agencies whose risk committees are not currently board committees. Registered clearing agencies will also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised governance documents and related policies and procedures. The Commission estimates that each operating registered clearing agency will incur an annual, recurring burden of approximately $1,311 [457] to comply with Rule 17Ad–25(d).

Multiple commenters expressed concern that rotating risk committee members on a regular basis could reduce expertise and institutional knowledge on the committee because members would be rotated out too frequently.[458] The Commission has addressed this potential economic cost by modifying the proposed rule so that registered clearing agencies are required to re-evaluate, but not necessarily rotate, the membership of the risk committee annually.[459]

4. Economic Considerations for Final Rules Regarding Conflicts of Interest Involving Directors or Senior Managers

As discussed in more detail above, Rules 17Ad–25(g) and (h) require policies and procedures that: (1) identify and document existing or potential conflicts of interest, mitigate or eliminate the conflicts of interest and document the actions taken,[460] and (2) obligate directors to report potential conflicts.[461]

Each registered clearing agency's existing policies and procedures for identifying, reporting, and mitigating conflicts of interest involving directors or senior managers will likely need minimal modifications. To the extent a registered clearing agency's existing policies and procedures are already in compliance with the final rules, the benefits discussed below will already be incorporated by market participants.

The final rules regarding managing conflicts of interest will benefit all clearing agencies by codifying current best practices, thus helping to ensure the continuity of these robust practices across all clearing agencies. This will benefit all clearing agencies and the broader financial markets by increasing the efficiency and resilience of the clearing market.

In addition, to the extent that the final rules require registered clearing agencies to strengthen policies and procedures that deal with identifying, reporting, mitigating or eliminating, and documenting conflicts of interest, strengthening those policies and procedures could reduce the monitoring costs borne by registered clearing agency stakeholders.

Finally, to the extent a previously undisclosed conflict of interest resulted in less favorable outcomes for the registered clearing agency—such as higher expenses with service providers or the loss of business from smaller participants—the final rule will improve the registered clearing agency's profitability, operating efficiency, and effectiveness.

The final rules regarding conflicts of interest will cause registered clearing agency boards to expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. The Commission estimates that each operating registered clearing agency will incur a one-time burden of approximately $7,644 [462] to comply with Rules 17Ad–25(g) and (h). Registered clearing agencies will also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised policies and procedures. The Commission estimates that each operating registered clearing agency will incur an annual, recurring burden of approximately $2,622 [463] to comply with Rules 17Ad–25(g) and (h).

5. Economic Considerations for Final Rules Regarding Management of Risks From Relationships With Service Providers for Core Services

As discussed in Part II.E.1 above, Rule 17Ad–25(i) requires registered clearing agencies to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require senior management to identify, manage, and report the risks related to agreements with service providers for core services; provide ongoing monitoring of the service provider relationships; obtain evaluation, review, and approval of the service provider relationship from the board; and govern relationships with those service providers.[464]

To the extent a registered clearing agency does not currently have policies and procedures in place that could reasonably be considered in compliance with the final rule, the final rule will enhance the clearing agency's ability to assess potential risks presented by agreements with service providers of core services, including the potential for disruptions to the agency's operations. The ongoing monitoring requirement will enable the clearing agency to identify changes to, or increases in, the risks associated with agreements with service providers of core services and frame a timely response to these risks. The final rule will also assist the clearing agency in developing and pursuing policies and procedures for minimizing disruptions and harm to the agency's operations and customers should a risk associated with agreements with service providers be realized. Ultimately, the final rules will improve the resilience of registered clearing agencies and the stability of the broader financial system in the U.S.

Multiple commenters understood proposed Rule 17Ad–25(i) to duplicate the work already done by management or to shift the responsibility for oversight of service providers from senior management to the board, increasing board members' expertise or work requirements.[465] Some commenters explained that the additional work requirements associated with Rule 17Ad–25(i) might disincentivize potential candidates from serving on a registered clearing agency's board of directors.[466] The Commission has modified the proposed rule text to specify and delineate specific responsibilities of senior management and the board in the risk management

[456] This figure is based on the analysis in *infra* Part V.C. The per-hour costs are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[457] This figure is based on the analysis in *infra* Part V.C. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[458] *See, e.g.,* CCP12 at 6; DTCC at 6; LSEG at 12; ICE at 4–5; OCC at 26–27.

[459] *See supra* Part II.C.3.

[460] *See supra* Part II.D.1 (discussing Rule 17Ad–25(g)).

[461] *See supra* Part II.D.1 (discussing Rule 17Ad–25(h)).

[462] This figure is based on the analysis in *infra* Part V.D and Part V.E. The per-hour costs are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[463] This figure is based on the analysis in *infra* Part V.D and Part V.E. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[464] *See supra* Part II.E.1 (discussing Rule 17Ad–25(i)).

[465] *See supra* note 254 and related text.

[466] *See, e.g.,* CCP12 at 7; DTCC at 8–9; OCC at 2.

of service provider relationships.[467] Given the defined scope of the board's role, the Commission does not expect the rule will materially disincentivize potential candidates from serving on the board.

The final rules regarding the board's ultimate responsibility for the oversight of relationships with service providers for core services will cause registered clearing agencies to expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. For example, clearing agencies might need to create or revise policies for overseeing relationships with service providers for core services. The Commission estimates that each operating registered clearing agency will incur a one-time burden of approximately $38,590 [468] to comply with Rule 17Ad–25(i). Registered clearing agencies will also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised policies and procedures. The Commission estimates that each operating registered clearing agency will incur an annual, recurring burden of approximately $13,110 [469] to comply with Rule 17Ad–25(i).

Multiple commenters expressed concern that, in addition to the Commission's estimates of the initial and recurring costs to comply with Rule 17Ad–25(i), some registered clearing agencies may incur one-time costs to ''perform various policy and procedures reviews,'' provide a ''gap analysis and training on all updated policies and procedures to all relevant stakeholders,'' and to ''have the boards conduct their own review of CSP third-party plans.'' [470] One commenter estimated that, for its three participant-owned clearing agency subsidiaries, the additional initial cost per agency would be 317 hours.[471] Commenters also stated that some agencies may incur additional recurring costs related to ''monitoring compliance and documentation activities'' and ''preparing and presenting to the boards for review and approval plans for entering into third-party relationships with CSPs.'' [472] One commenter estimated that, for the three participant-owned clearing agencies, the additional recurring annual cost per agency would be 220 hours.[473] The Commission estimates that a monetary equivalent of these additional costs suggested by commenters would be an additional one-time cost of up to $157,707 [474] and an annual, recurring cost of up to approximately $96,140 [475] to comply with Rule 17Ad–25(i). The Commission anticipates that the additional costs discussed by the commenter would vary with the size of the registered clearing agency. Therefore, it is likely that each operating registered clearing agency will incur a one-time burden of between $38,590 and $196,297 [476] and an annual, recurring burden of between $13,110 and $109,250 [477] to comply with Rule 17Ad–25(i).

6. Economic Considerations for Final Rules Regarding Formalized Solicitation, Consideration, and Documentation of Stakeholders' Viewpoints

As discussed in more detail above, Rule 17Ad–25(j) requires policies and procedures to solicit, consider, and document the registered clearing agency's consideration of the views of its participants and other relevant stakeholders regarding material developments in its governance and operations.[478]

To the extent registered clearing agency boards' inadequate solicitation of stakeholder viewpoints has caused some stakeholder views not to be considered, the final rules regarding the solicitation, consideration, and documentation of stakeholders' views will improve boards' consideration of different stakeholder views. The improved consideration of different views is expected to help persuade stakeholders with divergent interests to assert their needs more vigorously, which will encourage debate among actors with different goals. More informed debates will, in turn, help to foster consensus with mandates and other decisions that are supported by a broader spectrum of stakeholders. Consequently, registered clearing agencies will identify and develop rule proposals that (to the extent the Commission considers them) will be more likely to meet the public interest requirements under section 17A of the Exchange Act.[479]

Some commenters pointed out additional potential benefits of the rule. One commenter stated that adopting the rule would ensure that all current and future registered clearing agencies are compliant with the current industry best practices.[480] Another commenter provided a specific use case for the rule, stating that requiring the consideration of stakeholder views could help registered clearing agencies facilitate the transition to clearing Treasury securities.[481]

One commenter stated that requiring registered clearing agencies to solicit and consider stakeholder viewpoints for all material changes in governance and operations would likely result in registered clearing agency governance becoming ''less dynamic and responsive to changes and risks in the markets they serve.'' [482] The Commission has modified the requirements for considering stakeholder viewpoints so that they only pertain to risk management and operations, as opposed to all governance and operations. Given that registered clearing agencies already solicit stakeholder viewpoints, the reduced scope of the rule is sufficiently focused that the requirement will not cause clearing agencies to be significantly less dynamic or responsive to changes and risks.

The final rules regarding obligations of the board will cause registered clearing agency boards to expend resources reviewing, revising, and possibly creating governance documents and related policies and procedures. For example, boards might need to create policies for soliciting, considering, and documenting the consideration of stakeholders' views. The Commission estimates that each operating registered clearing agency will incur a one-time burden of approximately $7,086 [483] to comply with Rule 17Ad–25(j).

[467] *See supra* Part II.E.3.

[468] This figure is based on the analysis in *infra* Part V.F. The per-hour costs are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[469] This figure is based on the analysis in *infra* Part V.F. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[470] *See,* DTCC at 10–11. *See also* CCP12 at 7.

[471] *See* DTCC at 10–11. DTCC estimated that its three subsidiary registered clearing agencies would have a combined additional initial burden of 950 hours.

[472] *See, e.g.,* DTCC at 11–12.

[473] *See* DTCC at 11–12. DTCC estimated that its three subsidiary registered clearing agencies would have a combined additional recurring burden of 660 hours.

[474] The calculation assumes that the additional hours of work would be equally split between an assistant general counsel and a compliance attorney. The per-hour costs are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[475] The calculation assumes that all the additional work would be done by a compliance attorney. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[476] $38,590 + $157,707 = $196,297.

[477] $13,110 + $96,140 = $109,250.

[478] *See supra* Part II.F.1 (discussing Rule 17Ad–25(j)).

[479] *See* 15 U.S.C. 78q–1(b)(3)(F).

[480] *See* Barclays et al. at 2.

[481] *See* Citadel at 1.

[482] DTCC at 3.

[483] This figure is based on the analysis in *infra* Part V.G. The per-hour costs are from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

Registered clearing agency boards will also need to expend future resources for monitoring, compliance, and documentation activities related to the new or revised policies and procedures. The Commission estimates that each operating registered clearing agency will incur an annual, recurring burden of approximately $1,748 [484] to comply with Rule 17Ad–25(j).

*D. Reasonable Alternatives to the Final Rules*

1. Allow More Flexibility in Governance, Operations, and Risk Management

When determining the content of its policies and procedures, each registered clearing agency must have the ability to consider the effects of its unique characteristics and circumstances, including ownership and governance structures, on direct and indirect participants, markets served, and the risks inherent in products cleared.[485]

It has been the Commission's experience that particular securities markets (*e.g.,* equities, fixed income, and options) have unique conventions, characteristics, and structures that are best addressed on a market-by-market basis. The Commission recognizes that a less prescriptive approach could help promote efficient and effective practices and encourage regulated entities to consider how to manage their regulatory obligations and risk management practices in a way that complies with Commission rules, while considering the particular characteristics of their business.[486]

Many commenters discussed the balance of allowing governance flexibility while still improving registered clearing agency corporate governance and stability in the broader financial markets.[487] Some commenters thought the proposed rules were too prescriptive.[488]

However, registered clearing agencies may not fully internalize the social costs of differing incentives between owners and participants, among various types of participants, and between registered clearing agency stakeholders and the broader financial markets. Thus, allowing too much flexibility in clearing agency governance may not appropriately address the needs and incentives of the direct or indirect participants or the broader financial market.

The Commission believes that the final rules appropriately balance the effects and burdens of imposing more prescriptive governance requirements on registered clearing agencies while also enhancing the resilience of clearing markets and U.S. financial system.

2. Adopt More Prescriptive Governance Requirements

Several commenters thought the final rules should be more prescriptive than the proposed rules. For example, commenters recommended requiring that all registered clearing agency boards have a majority of independent directors,[489] preventing persons affiliated with participants from being considered independent,[490] using a five-year lookback period (instead of a one-year lookback period) when determining independence,[491] requiring that smaller participants be on the board and on board committees,[492] requiring that the chair of all board committees be independent,[493] requiring fitness standards for RMC members,[494] requiring term limits for RMC members,[495] requiring a registered clearing agency to promptly report to the Commission whenever the board does not follow the recommendation of the risk committee,[496] and requiring board members recuse themselves when they have a conflict of interest.[497] However, as discussed in the previous reasonable alternative, other commenters supported less prescriptive governance regulations for registered clearing agencies.

As discussed in the previous reasonable alternative, the Commission believes that the final rules appropriately balance the benefits and burdens of more prescriptive governance requirements against the benefits and risks of flexibility in governance and risk management. On the one hand, a more prescriptive governance approach could help ensure that registered clearing agencies internalize the social costs of differing incentives between owners and participants, among various types of participants, and between registered clearing agency stakeholders and the broader financial markets. On the other hand, adopting more prescriptive governance requirements could limit clearing agencies' flexibility to implement policies and procedures that are equally effective but also take into account the agency's unique characteristics and circumstances . The final rules strike a reasonable balance between these two considerations by codifying the current governance best practices to enhance registered clearing agency governance while still allowing registered clearing agencies to tailor governance structures, policies, and procedures to their specific needs.

3. Establish Limits on Participant Voting Interests

In 2010, the Commission proposed Regulation MC, which was ''designed to mitigate potential conflicts of interest . . . through conditions and structures related to ownership, voting, and governance.'' [498] Regulation MC proposed mitigating divergent incentives, especially between larger and smaller participant-owners, by imposing maximum voting interest limits on participants. Specifically, Regulation MC proposed that security-based swap clearing agencies be required to choose one of two governance alternatives: the Voting Interest Alternative and the Governance Interest Alternative. The Voting Interest Alternative in part prevented any single participant from having more than 20 percent ownership or voting interest in a clearing agency, and limited total

[484] This figure is based on the analysis in *infra* Part V.G. The per-hour cost is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, *supra* note 444.

[485] *See* CCA Standards Adopting Release, *supra* note 4, at 70806 (''The Commission believes it is appropriate to provide covered clearing agencies with flexibility, subject to their obligations and responsibilities as SROs under the Exchange Act, to structure their default management processes to take into account the particulars of their financial resources, ownership structures, and risk management frameworks.'').

[486] *See* CCA Standards Adopting Release, *supra* note 4, at 70801; *see also* Randall S. Kroszner, Central Counterparty Clearing: History, Innovation, and Regulation, 30 Econ. Persp. 37, 41 (2006) (''[M]ore intense government regulation of CCPs may prove counterproductive if it creates moral hazard or impedes the ability of CCPs to develop new approaches to risk management.'').

[487] *See, e.g.,* DTCC at 3 (''We appreciate those aspects of the Proposal that balance effective governance with general principles of dynamism and flexibility, and any concerns or critiques we raise herein with respect to other aspects of the Proposal are informed by this same perspective.'').

[488] *See, e.g.,* CCP12 at 1 (''. . . some of the Proposed Rule regarding the governance and conflicts of interest of clearing agencies may be too prescriptive, given the diversity among clearing agencies and the need for these organizations to tailor their structures and governance for the markets and products they clear.'').

[489] *See* Better Markets, at 17. *Cf.* Saguato, at 2 (''the distinction in board composition between participant-owned . . . versus investor-owned clearing agencies . . . is [neither] necessary [nor] justified'').

[490] *See* Better Markets at 16; ISDA at 6; IDTA at 1.

[491] *See* LSEG at 5.

[492] *See* IDTA at 4.

[493] *See* LSEG at 13.

[494] *See* SIFMA AMG at 5.

[495] *See* ISDA at 3 (recommending risk committee members serve for at least two years and no more than five years); SIFMA AMG, at 5 (recommending a three-year term).

[496] *See* Saguato at 4; ISDA at 4.

[497] *See* Better Markets at 22.

[498] *See* Regulation MC Proposing Release, *supra* note 82, at 65882.

participant ownership or voting interests to no more than 40 percent. The Voting Interest Alternative also required that at least 35 percent of the board be independent directors. The Governance Interest Alternative in part limited any participant to no more than 5 percent ownership or voting interests in the clearing agency, and required that at least 51 percent of the board be independent directors.

One commenter proposed adopting rules similar to those proposed in Regulation MC and further supplementing it ''with more direct actions against the market power of large participants.'' [499] The same commenter stated that the reasons the Commission provided for not adopting the bright-line rules in Regulation MC were not sufficient.[500]

The Commission has not adopted ownership limits in the current rules because rules during the intervening time have significantly altered how registered clearing agencies must treat smaller participants.[501] In addition, while reduced participants' ownership in registered clearing agencies can potentially reduce the conflicts of interest between large and small and medium participants, it could also reduce incentives for participants to be actively involved in the agency's governance. This could also increase voting power of non-participant shareholders, thereby aggravating the conflict of interest between participants and non-participant owners. Given these considerations, the net benefit of limiting the voting interests of participants could be less than that under the final rules.

4. Increase Shareholders' At-Risk Capital (''Skin in the Game'')

The final rules are intended, in part, to better manage divergent incentives of registered clearing agency owners and non-owner participants. One suggested cause of the incentive misalignment is owners' lack of at-risk capital (''skin in the game'').[502] Under the existing regulatory structure, for-profit registered clearing agencies can bifurcate risk from reward, sending the reward (*e.g.,* profits) to owners and requiring participants to hold disproportionate risks (*e.g.,* responsibility for non-default losses or participants' defaulted positions).[503] In the Governance Proposing Release, the Commission also expressed its belief that the proposed rules would help facilitate registered clearing agencies' ability and motivation to adopt policies to further mitigate incentive misalignment, including a skin in the game requirement.

Multiple commenters voiced support for a skin in the game requirement.[504] One commenter disagreed with the Commission's belief expressed in the Governance Proposing Release that the proposed rules would help facilitate registered clearing agencies' ability to adopt policies such as skin in the game requirements and recommended that the Commission consider several risk management and resiliency initiatives, such as skin in the game, that were not within the scope of the rules encompassed in the proposal.[505]

For the reasons discussed in Part IV.B.3, the Commission continues to believe that the governance requirements in the final rules will help a registered clearing agency successfully manage the divergent incentives of its owners and participants. However, giving consideration to risk management and resiliency initiatives, such as skin in the game, could be appropriate in the future.[506]

5. Increase Public Disclosure

One of the purposes of the final rules is to increase transparency into board governance. Increased transparency could also be achieved by requiring registered clearing agencies to enhance their governance disclosures. For example, the Commission could require registered clearing agencies to publicly disclose, for each director, the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director. This requirement could include each director's affiliation with registered clearing agency participants. The Commission could require these disclosures to be submitted in a structured (*i.e.,* machine-readable) data language, which could augment any transparency benefits resulting from the disclosures by increasing the efficiency with which they are processed.

Transparency into board governance is beneficial for the clearing agency's investors, regulators, and market participants, as it would provide a more complete picture of the corporate governance in the clearing agencies industry and allow better assessment of risks and investor protection issues as it relates to each registered clearing agency. Increased public disclosure could be an effective alternative governance mechanism for clearing agencies if clearing agencies were subject to active market discipline by customers and investors. However, registered clearing agency currently have attenuated exposure to such market governance mechanisms because of limited competition among clearing agencies and the closely held nature of registered clearing agencies' ownership structures. Therefore, absent the final rules, it is possible that registered clearing agencies would not make any significant changes to their governance, operations, or risk management solely as a result of the increased public governance disclosure.

In addition, to the extent a registered clearing agency modified its governance, operations, or risk management in response to the increased public disclosure, absent the final rules, the clearing agency would be incentivized to enact policies that are beneficial to the clearing agency without necessarily considering the effects of those policies on the resilience and efficiency of the clearing market as a whole.

The final rules do not include increased public disclosure requirements because the current structure of the clearing agency market significantly limits the possible benefits.

6. Require Risk Working Group in Addition To Risk Committee

Multiple commenters recommended that the Commission require each registered clearing agency to have a risk working group, in addition to the RMC.[507] The risk working group would be one of the fora through which the registered clearing agency could solicit and consider stakeholders viewpoints regarding material developments in the

[499] Better Markets at 2,10.

[500] *See* Better Markets at 15.

[501] The Commission previously adopted rules to promote access to registered clearing agencies, including access for smaller participants. *See generally* Governance Proposing Release, *supra* note 2, at 51816–51817 (discussing, among other rules, 17 CFR 240.17Ad–22(b)(5) through (7)).

[502] *See, e.g.,* Saguato, *supra* note 435, at 488 (''[There is] significant imbalance of the economic exposure of clearing members vis-à-vis clearinghouses and their holding groups. This imbalance . . . results in the misaligned incentives of members and share-holders, which creates agency costs between the firms' primary stakeholders that threaten clearinghouses' systemic resilience.'').

[503] *See* OCC, Order Approving Proposed Rule Change to Establish OCC's Persistent Minimum Skin-In-The-Game, Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861, 29863 (June 3, 2021) (''The Commission continues to regard skin-in-the-game as a potential tool to align the various incentives of a covered clearing agency's stakeholders, including management and clearing members.'').

[504] *See, e.g.,* Better Markets at 5, 13–14; Barclays et al. at 4.

[505] ICI at 7 and n. 30. *See also* the discussion in Part II.A.4 accompanying note 75.

[506] Governance Proposing Release, *supra* note 2, at n.232 and accompanying text.

[507] *See, e.g.,* Barclays et al. at 2; ICI at 3; ISDA at 3; Saguato at 4; SIFMA AMG at 4; SIFMA at 3–4.

registered clearing agency's risk management, in accordance with Rule 17Ad–25(j).[508] Unlike the RMC, the risk working group would be an advisory group. To harmonize with the existing CFTC and EMIR requirements for a risk working group,[509] the Commission could require that the risk working group be chaired by an independent member of the board,[510] include indirect participants [511] and customers of participants (*i.e.,* end users),[512] not include owners,[513] and have its membership rotated on a regular basis.[514] The Commission could also require representatives from direct participants of varying sizes.[515]

Requiring a risk working group would benefit registered clearing agencies by clearly harmonizing with CTFC and EMIR requirements. On the other hand, requiring a risk working group could impose costs on a registered clearing agency if the registered clearing agency is not regulated by the CFTC or subject to EMIR and prefers to use a different forum to solicit and consider stakeholders viewpoints regarding material developments in the registered clearing agency's risk management. The Commission is not adopting a rule to require risk working groups because the benefits of doing so do not justify the potential costs of a clearing agency's reduced flexibility in how it structures its governance arrangements. The Commission's decision to not require a risk working group does not impose any additional costs on clearing agencies. Clearing agencies that are also regulated by the CFTC or subject to EMIR can use the requisite risk working group as a forum for satisfying the requirements of Rule 17Ad–25(j).

## V. Paperwork Reduction Act

As discussed in the Governance Proposing Release, Rule 17Ad–25 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[516] The Commission submitted the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. The title of the information collection is ''Rule 17Ad–25—Clearing Agency Governance and Conflicts of Interest'' (OMB Control No. 3235–0800). 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.

As discussed further below and previously in the Governance Proposing Release,[517] Rules 17Ad–25(b) through (d) and (g) through (j) each contain collections of information. The collections in Rules 17Ad–25(b) through (d) and (g) through (j) are mandatory.[518] To the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential subject to the provisions of applicable law.[519]

Respondents under these rules are registered clearing agencies, of which there are currently eight.[520] The Commission continues to estimate for purposes of this PRA that one additional entity may seek to register as a clearing agency in the next three years, and so for purposes of this release the Commission has assumed nine respondents.

### *A. Rule 17Ad–25(b)*

The requirements and purpose of Rule 17Ad–25(b), as modified at adoption, have been discussed in Part II.A and also in the Governance Proposing Release.[521] Specifically, the Commission is modifying Rule 17Ad–25(b)(2)(iii) with a technical change to specify that the documentation requirement applies to both the clearing agency's evaluation of director independence *and* its ultimate determination (*i.e.,* whether the director qualifies as an independent director or is not an independent director). Because the modification is consistent with the discussion of the proposed rule in the Governance Proposing Release, the burden is unchanged from the original proposal. Accordingly, the Commission continues to estimate that Rule 17Ad–25(b)(2) will require respondent clearing agencies to incur a one-time burden of 44 hours to memorialize information that has been gathered for the person(s) making the determination to consider prior to making it,[522] as well as 5 hours to document and preserve the records of the evaluation and determination.[523] The Commission also continues to estimate that the initial activities required by Rule 17Ad–25(b)(2) will impose an aggregate initial burden on respondent clearing agencies of 441 hours.[524] Due to the fact that board composition changes on occasion after elections or due to unexpected events such as restructuring, resignations, or deaths, the Commission continues to estimate that respondent clearing agencies will incur an ongoing annual burden of 98 hours to repeat the above process of memorializing information and documenting a determination twice a year.[525] The Commission also continues to estimate that the ongoing activities required by Rule 17Ad–25(b)(2) impose an aggregate ongoing

[508] *See* ISDA at 5 (suggesting a risk working group as a forum for soliciting and considering stakeholder viewpoints).

[509] The CFTC requirements for risk working groups are in 17 CFR 39.24(b). The EMIR requirements for risk working groups are in EMIR, *supra* note 56, Article 28. Multiple commenters encouraged harmonization with the CFTC's risk committee rule. *See, e.g.,* ICE at 5; ICI at 3; SIFMA AMG at 1.

[510] *See* EMIR, *supra* note 56, Article 28 (requiring that the risk committee be ''chaired by an independent member of the board.'').

[511] *See* EMIR, *supra* note 56, Article 28 (requiring that the risk committee ''shall be composed of representatives of its clearing members, independent members of the board and representatives of its clients.'').

[512] *See* 17 CFR 39.24(b)(11)(ii) (The CFTC requires that ''A risk management committee includes at least two clearing member representatives, and, if applicable, at least two representatives of customers of clearing members.'').

[513] *See* LSEG at 11 (''owners are not permitted to be on the RMC under EMIR'').

[514] *See* 17 CFR 39.24(b)(11)(iii) (The CFTC requires that ''membership of a risk management committee is rotated on a regular basis.'').

[515] Several commenters recommended requiring diverse representation from among participants (*See, e.g.,* IDTA at 3; CCP12 at 6).

[516] *See* 44 U.S.C. 3501 *et seq.*

[517] *See* Governance Proposing Release, *supra* note 2, at 51851.

[518] The existing record maintenance and preservation requirements in Rule 17a–1 require a registered clearing agency to keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity. Accordingly, under the existing provisions of Rule 17a–1, registered clearing agencies are required to preserve at least one copy of records created for the purposes of complying with Rule 17Ad–25 for at least five years, with the first two years in an easily accessible place.

[519] *See, e.g.,* 5 U.S.C. 552 *et seq.* Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. *See* 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. *See* 5 U.S.C. 552(b)(8).

[520] The Governance Proposing Release identified ten respondents, based on nine registered clearing agencies; however, on November 9, 2023, the Commission approved the withdrawal of one registered clearing agency, reducing the number of respondents. *See* Release No. 34–98902 (Nov. 9, 2023).

[521] *See* Governance Proposing Release, *supra* note 2, at 51820–27.

[522] This figure is calculated as follows: ((Chief Compliance Officer for 4 hours) + (Compliance Attorney for 40 hours)) = 44 hours.

[523] This figure is calculated as follows: ((Chief Compliance Officer for 1 hours) + (Compliance Attorney for 4 hours)) = 5 hours.

[524] This figure is calculated as follows: 49 hours × 9 respondent clearing agencies = 441 hours.

[525] This figure is calculated as follows: ((Chief Compliance Officer for 10 hours) + (Compliance Attorney for 88 hours)) = 98 hours.

burden on respondent clearing agencies of 882 hours.[526]

*B. Rule 17Ad–25(c)*

The requirements and purpose of Rule 17Ad–25(c) have been discussed in Part II.B and also in the Governance Proposing Release.[527] As discussed in the Governance Proposing Release,[528] Rule 17Ad–25(c)(1) through (4) add governance requirements regarding the nominating committee of the board that do not appear in the existing requirements for governance arrangements in Rules 17Ad–22(d)(8) and 17Ad–22(e)(2).[529] Because the governance requirements in Rule 17Ad–25(c) are consistent with the discussion of the proposed rule in the Governance Proposing Release, the initial burden is unchanged from the original proposal. Therefore, the Commission continues to expect that the PRA burden for a respondent clearing agency includes the incremental burdens of reviewing and revising existing governance documents and related policies and procedures, and creating new governance documents and related policies and procedures, as necessary, pursuant to the rule. Accordingly, the Commission continues to estimate that respondent clearing agencies will incur an aggregate one-time burden of approximately 720 hours to review and revise existing governance documents and related policies and procedures and to create new governance documents and related policies and procedures, as necessary.[530]

Rule 17Ad–25(c)(1) through (4) also impose ongoing burdens on a respondent clearing agency. As discussed in the Governance Proposing Release, the rule will require ongoing monitoring and compliance activities with respect to governance documents and related policies and procedures created in response to the rule, and ongoing documentation activities with respect to the implementation of a written process for a nominating committee to evaluate board nominees or directors, pursuant to the rule. In addition, as discussed in Part II.B.2, the Commission is modifying Rule 17Ad–25(c) in two ways: the Commission is modifying paragraph (1) to add that the nominating committee shall ''evaluate the independence of nominees and directors,'' in addition to nominees for serving as directors, and paragraph (4)(iv) in two places to specify that the evaluation process applies to nominees as well as directors. Because this modification is consistent with the discussion of the proposed rule in the Governance Proposing Release, the ongoing burden is unchanged from the original proposal. Accordingly, the Commission continues to estimate that the ongoing activities required by Rule 17Ad–25(c)(1) through (4) impose an aggregate annual burden on respondent clearing agencies of 270 hours.[531]

*C. Rule 17Ad–25(d)*

The requirements and purpose of Rule 17Ad–25(d) have been discussed in Part II.C and also in the Governance Proposing Release.[532] As discussed in the Governance Proposing Release,[533] the Commission understands that many registered clearing agencies currently have written governance arrangements that largely conform to the requirements for RMCs in Rules 17Ad–25(d)(1) and (2). Therefore, the Commission continues to expect that the PRA burden for a respondent clearing agency includes the incremental burdens of reviewing and revising its existing governance documents and related policies and procedures and creating new governance documents and related policies and procedures, as necessary, pursuant to the rule.[534] As discussed in Part II.C.3, the Commission is adopting Rule 17Ad–25(d) as proposed, with modifications. Specifically, Rule 17Ad–25(d)(1) has been modified to reflect that: (1) the RMC is ''of the board'' of the registered clearing agency; (2) the RMC's membership must be re-evaluated annually.'' Additionally, Rule 17Ad–25(d)(2) has been modified to reflect that the RMC's work must support the ''overall risk management, safety and efficiency of the registered clearing agency.'' However, these modifications would impose the same burden as the original proposal because, as discussed in the Governance Proposing Release, the proposed requirement to ''reconstitute'' the RMC provides each registered clearing agency with discretion to determine the appropriate timing for reconstitution, explaining that, for example, the charter for the RMC could establish that the committee will conduct a review of its members annually to assess whether the committee continues to be an accurate reflection of the clearing agency's owners and participants.[535] Accordingly, the Commission continues to estimate that respondent clearing agencies will incur an aggregate one-time burden of approximately 72 hours to review and revise existing governance documents and related policies and procedures and to create new governance documents and related policies and procedures, as necessary.[536]

Rules 17Ad–25(d)(1) and (2) also impose ongoing burdens on a respondent clearing agency, including ongoing monitoring and compliance activities with respect to the governance documents and related policies and procedures created in response to the rule. The rule also requires ongoing documentation activities with respect to the establishment of an RMC. Although the Commission has modified Rule 17Ad–25(d)(1) and (2) for the same reasons as discussed above, the ongoing burden will be unchanged from the Governance Proposing Release. Accordingly, the Commission continues to estimate that the ongoing activities required by Rules 17Ad–25(d)(1) and (2) impose an aggregate annual burden on respondent clearing agencies of 27 hours.[537]

*D. Rule 17Ad–25(g)*

The requirements and purpose of Rule 17Ad–25(g) have been discussed in Part II.D and also in the Governance Proposing Release.[538] As discussed in the Governance Proposing Release, Rule 17Ad–25(g)(1) contains similar provisions to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2), in that it references clear and transparent governance arrangements but also adds additional requirements that do not appear in those existing rules. The Commission expects that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements

[526] This figure is calculated as follows: 98 hours × 9 respondent clearing agencies = 882 hours.

[527] *See* Governance Proposing Release, *supra* note 2, at 51828–30.

[528] *See id.* at 51852.

[529] 17 CFR 240.17ad–22(d)(8), (e)(2).

[530] This figure is calculated as follows: ((Assistant General Counsel for 30 hours) + (Compliance Attorney for 50 hours)) = 80 hours × 9 respondent clearing agencies = 720 hours.

[531] This figure is calculated as follows: (Compliance Attorney for 30 hours) × 9 respondent clearing agencies = 270 hours.

[532] *See* Governance Proposing Release, *supra* note 2, at 51830–33.

[533] *See id.* at 51852.

[534] Because the written governance arrangements at many registered clearing agencies already largely conform to the requirements for RMCs, registered clearing agencies may need to make only limited changes to update their governing documents and related policies and procedures to help ensure compliance with Rules 17Ad–25(d)(1) and (2). *See* Governance Proposing Release, *supra* note 2, at 51852.

[535] *See id.* at 51832–33.

[536] This figure is calculated as follows: ((Assistant General Counsel for 3 hours) + (Compliance Attorney for 5 hours)) = 8 hours × 9 respondent clearing agencies = 72 hours.

[537] This figure is calculated as follows: (Compliance Attorney for 3 hours) × 9 respondent clearing agencies = 27 hours.

[538] *See* Governance Proposing Release, *supra* note 2, at 51833–35.

in the rule, and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, the Commission continues to estimate that respondent clearing agencies will incur an aggregate one-time burden of approximately 72 hours to review and revise existing policies and procedures and to create new policies and procedures as necessary to ensure compliance with Rule 17Ad–25(g)(1).[539]

Rule 17Ad–25(g)(1) also imposes ongoing burdens on a respondent clearing agency, including ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. As discussed in the Governance Proposing Release, Rule 17Ad–25(g)(1) requires a registered clearing agency to update current policies and procedures or establish new policies and procedures to ensure compliance. The Commission continues to estimate that the ongoing activities required by Rule 17Ad–25(g)(1) impose an aggregate annual burden on respondent clearing agencies of 27 hours.[540]

Like paragraph (g)(1), paragraph (g)(2) also contains similar provisions to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2), in that it references clear and transparent governance arrangements but also adds additional requirements that do not appear in those rules. As discussed in the Governance Proposing Release, the Commission continues to expect that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. The Commission recognizes that while registered clearing agencies may have existing policies and procedures to comply with Rule 17Ad–25(g)(1), they may not have current policies and procedures designed specifically to mitigate or eliminate and document how the conflict of interest was mitigated or eliminated, as required by Rule 17Ad–25(g)(2). Accordingly, the Commission continues to estimate that respondent clearing agencies will incur an aggregate one-time burden of approximately 45 hours to review and revise existing policies and procedures and to create new policies and procedures as necessary to help ensure compliance with Rule 17Ad–25(g)(2).[541]

Rule 17Ad–25(g)(2) also imposes ongoing burdens on a respondent clearing agency, including ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. As discussed in the Governance Proposing Release, Rule 17Ad–25(g)(2) requires updating current policies and procedures or establishing new policies and procedures to ensure compliance. The Commission continues to estimate that the ongoing activities required by Rule 17Ad–25(g)(2) impose an aggregate annual burden on respondent clearing agencies of 18 hours.[542]

*E. Rule 17Ad–25(h)*

The requirements and purpose of Rule 17Ad–25(h) have been discussed in Part II.D and also in the Governance Proposing Release.[543] As discussed in the Governance Proposing Release,[544] Rule 17Ad–25(h) contains similar provisions to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2), in that it references clear and transparent governance arrangements but also adds additional requirements that do not appear in those rules. The Commission continues to expect that a respondent clearing agency may have written rules, policies, and procedures similar to the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising current policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. Accordingly, the Commission continues to estimate that respondent clearing agencies would incur an aggregate one-time burden of approximately 18 hours to review and revise existing policies and procedures and to create new policies and procedures as necessary to ensure compliance with Rule 17Ad–25(h).[545]

Rule 17Ad–25(h) also imposes ongoing burdens on a respondent clearing agency, including ongoing monitoring and compliance activities with respect to its policies and procedures under the rule. The Commission continues to estimate that the ongoing activities required by Rule 17Ad–25(h) impose an aggregate annual burden on respondent clearing agencies of 9 hours.[546]

*F. Rule 17Ad–25(i)*

The requirements and purpose of Rule 17Ad–25(i) have been discussed in Part II.E and also in the Governance Proposing Release.[547] As discussed in the Governance Proposing Release,[548] certain aspects of the rule may be addressed in existing requirements. For example, Rule 17Ad–25(i)(1) references the existence of a risk management framework but does not itself require the creation of such framework, maintenance of which is instead required for covered clearing agencies under Rule 17Ad–22(e)(3)(i).[549] Additionally, as discussed above,[550] there are existing requirements for managing operational risk under Rule 17Ad–22(d)(4) and Rule 17Ad–22(e)(17).[551] Therefore, the Commission expects that the PRA burden for a respondent clearing agency includes the incremental burdens of reviewing and revising its existing governance documents and related policies and procedures and creating new governance documents and related policies and procedures, as necessary, pursuant to the rule. However, as discussed further in Part II.E, the Commission is modifying the rule in several ways in response to comments regarding potential interpretations of the proposed rule text and the resulting burdens, which some commenters believe are substantially higher than the estimates in the Governance Proposing Release.[552] Because these modifications in the final rule are intended to align the rule text with the Commission's expectations at proposal and generally accepted corporate governance principles, which are themselves generally aligned with the recommendations and analysis provided by commenters, the initial burden estimates in the original proposal remain accurate. The modifications are meant to clearly differentiate the roles of

[539] This figure is calculated as follows: ((Assistant General Counsel for 5 hours) + (Compliance Attorney for 3 hours)) = 8 hours × 9 respondent clearing agencies = 72 hours.

[540] This figure is calculated as follows: (Compliance Attorney for 3 hours) × 9 respondent clearing agencies = 27 hours.

[541] This figure is calculated as follows: ((Assistant General Counsel for 3 hours) + (Compliance Attorney for 2 hours)) = 5 hours × 9 respondent clearing agencies = 45 hours.

[542] This figure is calculated as follows: (Compliance Attorney for 2 hours) × 9 respondent clearing agencies = 18 hours.

[543] *See* Governance Proposing Release, *supra* note 2, at 51833, 51835.

[544] *See id.* at 51853–54.

[545] This figure is calculated as follows: ((Assistant General Counsel for 1 hours) + (Compliance Attorney for 1 hours)) = 2 hours × 9 respondent clearing agencies = 18 hours.

[546] This figure is calculated as follows: (Compliance Attorney for 1 hours) × 9 respondent clearing agencies = 9 hours.

[547] *See* Governance Proposing Release, *supra* note 2, at 51835–37.

[548] *See id.*

[549] *See* 17 CFR 240.17ad-22(e)(3)(i). In addition, the Commission notes that, currently, all registered clearing agencies are covered clearing agencies.

[550] *See supra* Part IV.B.4.c.

[551] 17 CFR 240.17ad–22(d)(4), (e)(17).

[552] *See* DTCC at 11 (stated that an additional 660 hours in annual burden would be required beyond the Commission's initial calculation).

senior management and the board in the context of Rule 17Ad–25(i) while preserving the intended impact of the proposed rule. In this regard, while the words and phrases in the proposed rule have changed and moved, the burdens remain unchanged. Accordingly, the Commission continues to estimate that respondent clearing agencies will incur an aggregate one-time burden of approximately 720 hours to review and revise existing governance documents and related policies and procedures and to create new governance documents and related policies and procedures, as necessary.[553]

Rule 17Ad–25(i) also imposes ongoing burdens on a respondent clearing agency, including ongoing documentation, monitoring, and compliance activities with respect to the governance documents and related policies and procedures created in response to the rule. For the same reasons as those discussed above regarding the initial burdens of the final rule, the burdens in the original proposal remain an accurate assessment of the anticipated ongoing burdens. Accordingly, as discussed in the Governance Proposing Release,[554] the Commission continues to estimate that the ongoing activities required by Rule 17Ad–25(i) impose an aggregate annual burden on respondent clearing agencies of 270 hours.[555]

*G. Rule 17Ad–25(j)*

The requirements and purpose of Rule17Ad–25(j) have been discussed in Part II.F and also in the Governance Proposing Release.[556] As discussed in the Governance Proposing Release,[557] Rule 17Ad–25(j) contains similar provisions to Rules 17Ad–22(d)(8) and 17Ad–22(e)(2) but will also impose additional governance obligations that do not appear in existing requirements, such as obligations to solicit and document its consideration of input received from certain types of relevant stakeholders, including, for example, customers of clearing agency participants.[558] As discussed in Part II.F.3, the Commission has modified the rule at adoption so that the scope of topics on which a registered clearing agency seeks input under the rule is ''risk management and operations'' rather than ''governance and operations.'' [559] However, this modification specifies the scope that was originally intended and discussed in the Governance Proposing Release.[560] Accordingly, the Commission continues to expect that a respondent clearing agency may have written rules, policies, and procedures similar to some of the requirements in the rule and that the PRA burden includes the incremental burdens of reviewing and revising existing policies and procedures and creating new policies and procedures, as necessary, pursuant to the rule. In addition, the Commission continues to estimate that respondent clearing agencies will incur an aggregate one-time burden of approximately 126 hours to review and revise existing policies and procedures and to create new policies and procedures, as necessary.[561]

Rule 17Ad–25(j) also imposes ongoing burdens on a respondent clearing agency, including ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. As discussed in the Governance Proposing Release, the rule will also require ongoing documentation activities with respect to the board's consideration of participants' and relevant stakeholders' views pursuant to the rule.[562] The Commission continues to estimate that the ongoing activities required by Rule 17Ad–25(j) impose an aggregate annual burden on respondent clearing agencies of 36 hours.[563]

*H. Chart of Total PRA Burdens*

| Name of information collection | Type of burden | Number of respondents | Initial burden per entity (hours) | Ongoing burden per entity (hours) | Total annual burden per (hours) entity (hours) | Total industry burden (hours) |
|---|---|---|---|---|---|---|
| 17Ad–25(b) | Recordkeeping | 9 | 49 | 98 | 147 | 1,323 |
| 17Ad–25(c) | Recordkeeping | 9 | 80 | 30 | 110 | 990 |
| 17Ad–25(d) | Recordkeeping | 9 | 8 | 3 | 11 | 99 |
| 17Ad–25(g) | Recordkeeping | 9 | 13 | 5 | 18 | 162 |
| 17Ad–25(h) | Recordkeeping | 9 | 2 | 1 | 3 | 27 |
| 17Ad–25(i) | Recordkeeping | 9 | 80 | 30 | 110 | 990 |
| 17Ad–25(j) | Recordkeeping | 9 | 14 | 4 | 18 | 162 |

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[564] Section 603(a) of the Administrative Procedure Act,[565] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on ''small entities.'' [566] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[567] The Commission certified in the Governance Proposing Release, pursuant to section 605(b) of the RFA, that the proposed rules would not, if adopted, have a significant impact on a substantial number of small entities. The Commission received no comments on this certification.

[553] This figure is calculated as follows: ((Assistant General Counsel for 30 hours) + (Compliance Attorney for 50 hours)) = 80 hours × 9 respondent clearing agencies = 720 hours.

[554] *See* Governance Proposing Release, *supra* note 2, at 51854.

[555] This figure is calculated as follows: (Compliance Attorney for 30 hours) × 9 respondent clearing agencies = 270 hours.

[556] *See* Governance Proposing Release, *supra* note 2, at 51838.

[557] *See id.* at 51854.

[558] *See* 17 CFR 240.17ad–22(d)(8), (e)(2).

[559] *See supra* Part II.F.3 (discussing Rule 17Ad–25(j)).

[560] *See id.*

[561] This figure was calculated as follows: ((Assistant General Counsel for 8 hours) + (Compliance Attorney for 6 hours)) = 14 hours × 9 respondent clearing agencies = 126 hours.

[562] *See* Governance Proposing Release, *supra* note 2, at 51854.

[563] This figure was calculated as follows: (Compliance Attorney for 4 hours) × 9 respondent clearing agencies = 36 hours.

[564] *See* 5 U.S.C. 601 *et seq.*

[565] 5 U.S.C. 603(a).

[566] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' *See* 5 U.S.C. 601(b). The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this rulemaking, are set forth in 17 CFR 240.0–10.

[567] *See* 5 U.S.C. 605(b).

*A. Registered Clearing Agencies*

Rule 17Ad–25 applies to all registered clearing agencies. For the purposes of Commission rulemaking and as applicable to Rule 17Ad–25, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year, (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[568]

Based on the Commission's existing information about the clearing agencies currently registered with the Commission,[569] all such registered clearing agencies exceed the thresholds defining ''small entities'' set out above. While other clearing agencies may emerge and seek to register as clearing agencies with the Commission, no such entities would be ''small entities'' as defined in Exchange Act Rule 0–10.[570]

*B. Certification*

For the reasons described above, the Commission certifies that Rule 17Ad–25 does not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

## VII. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[571] the Office of Information and Regulatory Affairs has designated these rules as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

### Statutory Authority

The Commission is adopting Rule 17Ad–25 under the Commission's rulemaking authority in the Exchange Act, particularly Section 17(a), 15 U.S.C. 78q(a), Section 17A, 15 U.S.C. 78q–1, Section 23(a), 15 U.S.C. 78w(a), Section 765 of the Dodd-Frank Act, and 805 of the Clearing Supervision Act, 15 U.S.C. 8343 and 15 U.S.C. 5464 respectively.

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

### Text of Amendment

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78*o*–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Public Law 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Section 240.17ad–25 is added after § 240.17Ad–24 to read as follows:

### § 240.17ad–25 Clearing agency boards of directors and conflicts of interest.

(a) *Definitions.* All terms used in this section have the same meaning as in the Securities Exchange Act of 1934, and unless the context otherwise requires, the following definitions apply for purposes of this section:

*Affiliate* means a person that directly or indirectly controls, is controlled by, or is under common control with the registered clearing agency.

*Board of directors* means the board of directors or equivalent governing body of the registered clearing agency.

*Director* means a member of the board of directors or equivalent governing body of the registered clearing agency.

*Family member* means any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, including adoptive relationships, any person (other than a tenant or employee) sharing a household with the director or a nominee for director, a trust in which these persons (or the director or a nominee for director) have more than 50 percent of the beneficial interest, a foundation in which these persons (or the director or a nominee for director) control the management of assets, and any other entity in which these persons (or the director or a nominee for director) own more than 50 percent of the voting interests.

*Independent director* means a director of the registered clearing agency who has no material relationship with the registered clearing agency or any affiliate thereof.

*Material relationship* means a relationship, whether compensatory or otherwise, that exists or existed during a lookback period of one year from the initial determination in paragraph (b)(2) and that reasonably could affect the independent judgment or decision-making of the director.

*Service provider for core services* means any person that, through a written services provider agreement for services provided to or on behalf of the registered clearing agency, on an ongoing basis, directly supports the delivery of clearance or settlement functionality or any other purposes material to the business of the registered clearing agency.

(b) *Composition of the board of directors.* (1) A majority of the members of the board of directors of a registered clearing agency must be independent directors, unless a majority of the voting interests issued as of the immediately prior record date are directly or indirectly held by participants, in which case at least 34 percent of the members of the board of directors must be independent directors.

(2) Each registered clearing agency shall broadly consider all the relevant facts and circumstances, including under paragraph (g) of this section, on an ongoing basis, to affirmatively determine that a director does not have a material relationship with the registered clearing agency or an affiliate of the registered clearing agency, and is not precluded from being an independent director under paragraph (f) of this section. In making such determination, a registered clearing agency must:

(i) Identify the relationships between a director and the registered clearing agency or any affiliate thereof and any circumstances under paragraph (f) of this section;

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[568] *See* 17 CFR 240.0–10(d).

[569] *See supra* notes 379–380 and accompanying text (discussing volume of activity in the cleared SBS market and the value of transactions processed by DTCC and OCC). The notional value of CDS cleared by ICE was $23.8 trillion and $17.0 trillion in 2022 and 2021, respectively. *See* ICE, 2022 Annual Report,450739CLEANLPDF_LAN_26Mar202318511551_013.PDF (*q4cdn.com*). The notional value of CDS cleared by LCH SA was €3,367 billion and $2,283 billion in 2022 and 2021, respectively. *See* LCH Group Holdings Ltd., 2022 Annual Report, *https://www.lch.com/system/files/media_root/lch-group-holdings-limited-financial-statements-2022.pdf.* In each case, these volumes exceed the $500 million threshold for small entities.

[570] *See* 17 CFR 240.0–10(d). The Commission based this determination on its review of public sources of financial information about registered clearing agencies.

[571] 5 U.S.C. 801 *et seq.*

(ii) Evaluate whether any relationship is likely to impair the independence of the director in performing the duties of director; and

(iii) Document the evaluation and determination in writing.

(c) *Nominating committee.* (1) Each registered clearing agency must establish a nominating committee and a written evaluation process whereby such nominating committee shall evaluate nominees for serving as directors and evaluate the independence of nominees and directors.

(2) A majority of the directors serving on the nominating committee must be independent directors, and the chair of the nominating committee must be an independent director.

(3) The fitness standards for serving as a director shall be specified by the nominating committee, documented in writing, and approved by the board of directors. Such fitness standards must be consistent with the requirements of this section and include that the individual is not subject to any statutory disqualification as defined under Section 3(a)(39) of the Act.

(4) The nominating committee must document the outcome of the written evaluation process consistent with the fitness standards required under paragraph (c)(3) of this section. Such process shall:

(i) Take into account each nominee's expertise, availability, and integrity, and demonstrate that the board of directors, taken as a whole, has a diversity of skills, knowledge, experience, and perspectives;

(ii) Demonstrate that the nominating committee has considered whether a particular nominee would complement the other board members, such that, if elected, the board of directors, taken as a whole, would represent the views of the owners and participants, including a selection of directors that reflects the range of different business strategies, models, and sizes across participants, as well as the range of customers and clients the participants serve;

(iii) Demonstrate that the nominating committee considered the views of other stakeholders who may be affected by the decisions of the registered clearing agency, including transfer agents, settlement banks, nostro agents, liquidity providers, technology or other service providers; and

(iv) Identify whether each nominee or director would meet the definition of independent director in paragraphs (a) and (f) of this section, and whether each such nominee or director has a known material relationship with the registered clearing agency or any affiliate thereof, an owner, a participant, or a representative of another stakeholder of the registered clearing agency described in paragraph (c)(4)(iii) of this section.

(d) *Risk management committee.* (1) Each registered clearing agency must establish a risk management committee (or committees) of the board to assist the board of directors in overseeing the risk management of the registered clearing agency. The membership of each risk management committee must be re-evaluated annually and at all times include representatives from the owners and participants of the registered clearing agency.

(2) In the performance of its duties, the risk management committee must be able to provide a risk-based, independent, and informed opinion on all matters presented to the committee for consideration in a manner that supports the overall risk management, safety and efficiency of the registered clearing agency.

(e) *Committees generally.* If any committee has the authority to act on behalf of the board of directors, the composition of that committee must have at least the same percentage of independent directors as is required for the board of directors, as set forth in paragraph (b)(1) of this section.

(f) *Circumstances that preclude directors from being independent directors.* In addition to how the definition of independent director set forth in this section is applied by a registered clearing agency, the following circumstances preclude a director from being an independent director, subject to a lookback period of one year (counting back from making the initial determination in paragraph (b)(2) of this section) applying to paragraphs (f)(2) through (6) of this section:

(1) The director is subject to rules, policies, or procedures by the registered clearing agency that may undermine the director's ability to operate unimpeded, such as removal by less than a majority vote of shares that are entitled to vote in such director's election;

(2) The director, or a family member, has an employment relationship with or otherwise receives compensation other than as a director from the registered clearing agency or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency;

(3) The director, or a family member, is receiving payments from the registered clearing agency, or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency, that reasonably could affect the independent judgment or decision-making of the director, other than the following:

(i) Compensation for services as a director on the board of directors or a committee thereof; or

(ii) Pension and other forms of deferred compensation for prior services not contingent on continued service;

(4) The director, or a family member, is a partner in, or controlling shareholder of, any organization to or from which the registered clearing agency, or any affiliate thereof, or the holder of a controlling voting interest of the registered clearing agency, is making or receiving payments for property or services, other than the following:

(i) Payments arising solely from investments in the securities of the registered clearing agency, or affiliate thereof; or

(ii) Payments under non-discretionary charitable contribution matching programs;

(5) The director, or a family member, is employed as an executive officer of another entity where any executive officers of the registered clearing agency serve on that entity's compensation committee; or

(6) The director, or a family member, is a partner of the outside auditor of the registered clearing agency, or any affiliate thereof, or an employee of the outside auditor who is working on the audit of the registered clearing agency, or any affiliate thereof.

(g) *Conflicts of interest.* Each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to:

(1) Identify and document existing or potential conflicts of interest in the decision-making process of the clearing agency involving directors or senior managers of the registered clearing agency; and

(2) Mitigate or eliminate and document the mitigation or elimination of such conflicts of interest.

(h) *Obligation of directors to report conflicts.* Each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require a director to document and inform the registered clearing agency promptly of the existence of any relationship or interest that reasonably could affect the independent judgment or decision-making of the director.

(i) *Management of risks from relationships with service providers for core services.* Each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to:

(1) Require senior management to evaluate and document the risks related to an agreement with a service provider

for core services, including under changes to circumstances and potential disruptions, and whether the risks can be managed in a manner consistent with the clearing agency's risk management framework;

(2) Require senior management to submit to the board of directors for review and approval any agreement that would establish a relationship with a service provider for core services, along with the risk evaluation required in paragraph (i)(1) of this section;

(3) Require senior management to be responsible for establishing the policies and procedures that govern relationships and manage risks related to such agreements with service providers for core services and require the board of directors to be responsible for reviewing and approving such policies and procedures; and

(4) Require senior management to perform ongoing monitoring of the relationship, and report to the board of directors for its evaluation of any action taken by senior management to remedy significant deterioration in performance or address changing risks or material issues identified through such monitoring; or if the risks or issues cannot be remedied, require senior management to assess and document weaknesses or deficiencies in the relationship with the service provider for submission to the board of directors.

(j) *Obligation of board of directors to solicit and consider viewpoints of participants and other relevant stakeholders.* Each registered clearing agency must establish, implement, maintain, and enforce written policies and procedures reasonably designed to require the board of directors to solicit, consider, and document its consideration of the views of participants and other relevant stakeholders of the registered clearing agency regarding material developments in its risk management and operations on a recurring basis.

By the Commission.

Dated: November 16, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

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Part IV

## Department of Transportation

National Highway Traffic Safety Administration
49 Part 571

Federal Motor Vehicle Safety Standards: Child Restraint Systems; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

**[Docket No. NHTSA–2023–0040]**

**RIN 2127–AL34**

## Federal Motor Vehicle Safety Standards: Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends a Federal Motor Vehicle Safety Standard (FMVSS) regarding child restraint systems. The amendments, mandatory in one year, modernize the standard by, among other things, updating CRS owner registration program requirements, labeling requirements on correctly using child restraints, requirements for add-on school bus-specific child restraint systems, and provisions for NHTSA's use of test dummies in NHTSA compliance tests. Amendments mandatory in three years include adding a new FMVSS that updates to standard seat assemblies on which NHTSA tests child restraint systems for compliance with frontal crash performance requirements. This final rule fulfills a mandate of the Moving Ahead for Progress in the 21st Century Act (MAP–21) that directs NHTSA to update the standard seat assembly. The purpose of this final rule is to ensure continued effectiveness of child restraint systems in current and future vehicles.

**DATES:**

*Effective date:* February 5, 2024.

*IBR date:* The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 5, 2024. The incorporation by reference of certain other publications listed in the rule was approved by the Director as of February 6, 2012.

*Compliance date:* The compliance date for the amendments to FMVSS No. 213 is December 5, 2024. The compliance date for meeting FMVSS No. 213b is December 5, 2026. Optional early compliance with the standards is permitted.

*Reconsideration date:* If you wish to petition for reconsideration of this rule, your petition must be received by January 19, 2024.

**ADDRESSES:** Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a submission containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512). Please see further information in the Regulatory Notices and Analyses section of this preamble.

*Privacy Act:* The petition will be placed in the docket. Anyone is able to search the electronic form of all documents 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 (Volume 65, Number 70; Pages 19477–78) or you may visit *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.*

*Docket:* For access to the docket to read background documents or comments received, go to *www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, you may call Cristina Echemendia, Office of Crashworthiness Standards (telephone: 202–366–6345). For legal issues, you may call Deirdre Fujita or Matthew Filpi, Office of Chief Counsel (telephone: 202–366–2992). Address: National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** This final rule amends FMVSS No. 213, ''Child restraint systems,'' and adds FMVSS No. 213b, ''Child restraint systems; Mandatory applicability beginning December 5, 2026.'' The amendments to FMVSS No. 213, mandatory in one year, modernize the standard by, among other things, updating CRS owner registration program requirements, labeling requirements on correctly using child restraints, requirements for add-on school bus-specific child restraint systems, and provisions for NHTSA's use of test dummies in NHTSA compliance tests. FMVSS No. 213b, mandatory in three years, includes those amendments and updates the standard seat assembly on which NHTSA tests child restraint systems for compliance with frontal crash performance requirements. This final rule fulfills a MAP–21 that directs NHTSA to update the standard seat assembly. The purpose of this final rule is to ensure continued effectiveness of child restraint systems in current and future vehicles.

**Table of Contents**

## I. Executive Summary

This final rule amends FMVSS No. 213, ''Child restraint systems,'' [1] and adds FMVSS No. 213b, ''Child restraint systems; Mandatory applicability beginning December 5, 2026.'' The amendments to FMVSS No. 213, mandatory in one year, modernize the standard by updating the CRS owner registration program, labeling requirements instructing consumers on correct use of child restraints, requirements for add-on school bus-specific child restraint systems, and provisions for NHTSA's use of test dummies in NHTSA compliance tests. FMVSS No. 213b, mandatory on December 5, 2026, includes those requirements and updates the standard seat assembly on which NHTSA tests child restraint systems for compliance with frontal crash performance requirements. In updating the standard seat assembly, this final rule fulfills a statutory mandate set forth in MAP–21 directing the Secretary of Transportation (NHTSA by delegation) to amend the standard seat assembly specifications in FMVSS No. 213 to better simulate a single representative motor vehicle rear seat.

NHTSA has amended FMVSS No. 213 and issued FMVSS No. 213b for plain language reasons relating to the compliance dates of the amendments. This final rule includes amendments that can be implemented in one year, which NHTSA has set forth in the amended FMVSS No. 213. The change to the standard seat assembly is incorporated in FMVSS No. 213b, which the agency is providing a three-year lead time for implementation. Because this final rule has a number of different compliance dates for the amendments to FMVSS No. 213 and the incorporation of the new standard seat assembly, and permits optional early compliance with the rule, the regulatory text would be highly complex if the amendments were combined, and effective dates parceled out, in a single standard. NHTSA decided the requirements would be easier to read and understand if the agency issued amendments becoming effective in one year in FMVSS No. 213, and established FMVSS No. 213b to include those FMVSS No. 213 amendments and the standard seat assembly requirements that become effective in three years.

Accordingly, FMVSS No. 213 applies to CRSs manufactured *before* December 5, 2026. FMVSS No. 213b applies to CRSs manufactured *on or after* December 5, 2026. FMVSS No. 213 will sunset when FMVSS No. 213b becomes mandatory in three years.

### *Overview of This Final Rule*

NHTSA published the notice of proposed rulemaking (NPRM) preceding this final rule on November 2, 2020 (85 FR 69388, Docket No. NHTSA–2020–0093). This final rule adopts almost all the proposals in the NPRM, with some adjustments in response to comments. There were 29 comments to the docket. The NPRM generally received wide support from commenters. We point out the main subjects of this final rule below. The goal of this rule is to ensure the continued effectiveness of CRSs in current and future vehicles, thereby reducing the unreasonable risk of fatality and injury to children in motor vehicle crashes.

1. As directed by § 31501(b) of MAP–21, NHTSA amends the standard seat assembly (S6.1.1(a)(1)(ii)) so that it more closely resembles ''a single representative motor vehicle rear seat.'' The updated seat has seat cushions (consisting of foam and a cover), a specified geometry, and a child restraint anchorage system [2] and seat belt systems for attaching child restraints. The seat belts are a Type 2 seat belt, also known as a lap/shoulder or 3-point seat belt, and a Type 1 (lap seat belt) system. In response to comments, this final rule fine-tunes some features of the updated standard seat assembly and updates some test procedures to reduce potential sources of variability.

2. Under this final rule, NHTSA will test child restraint systems with internal components [3] that restrain the child for compliance while the CRS is attached to the updated standard seat assembly with a Type 2 belt.[4] However, in response to comments, the rule retains until September 1, 2029, the requirement that these CRSs must meet the standard's requirements when attached to the updated standard seat assembly with a Type 1 belt (S5.3.2).[5] This provision will provide time for on-road vehicles to change over to a passenger vehicle fleet that will have Type 2 belts in nearly all rear seats. The purpose of this requirement is to ensure the continued availability of CRSs that can be used in older model vehicles that only have Type 1 belts in rear passenger designated seating positions. Further, harnesses will continue to be tested

[1] 49 CFR 571.213, ''Child restraint systems.'' All references to subparagraphs in this preamble are to FMVSS No. 213 unless otherwise noted.

[2] Commonly called ''LATCH,'' which refers to *L*ower *A*nchors and *T*ethers for *Ch*ildren, a term industry developed to refer to the child restraint anchorage system required by FMVSS No. 225 for motor vehicles (49 CFR 571.225, ''Child restraint anchorage systems''). A child restraint anchorage system consists of two lower anchorages, and one upper tether anchorage. Each lower anchorage includes a rigid round rod, or ''bar,'' onto which a hook, a jaw-like buckle or other connector can be snapped. The bars are located at the intersection of the vehicle seat cushion and seat back. The upper tether anchorage is a ring-like object, bar or webbing loop to which the upper tether of a child restraint system can be attached. FMVSS No. 213 requires CRSs to be equipped with attachments that enable the CRS to attach to the vehicle's child restraint anchorage system.

[3] These internal components that restrain the child can be an internal harness, a fixed surface, or a movable surface.

[4] They are also subject to testing while attached with components of the LATCH system, which is a requirement previously established in FMVSS No. 213.

[5] ''Type 1'' and ''Type 2'' seat belt assemblies are defined in FMVSS No. 209, ''Seat belt assemblies.''

only with a Type 1 belt, and this requirement will not sunset.[6]

3. This final rule reduces the restrictions on the content and format of the CRS owner registration form manufacturers must provide with new CRSs for purposes of direct recall notifications (S5.8). The amendment will make it easier for parents and caregivers to register CRSs with manufacturers. It makes FMVSS No. 213 more responsive to the communication preferences and practices of today's parents and provides greater flexibility to manufacturers in responding to those preferences. The intent is to increase recall remedy rates.

4. This final rule amends FMVSS No. 213's labeling requirements so that manufacturers have more flexibility in informing parents how to correctly use child restraints (S5.5), provided the following limits and all other labeling requirements are met. It directs manufacturers to label CRSs with information on the maximum height and weight of the children who can safely occupy the system (S5.5.2(f)) *for each mode* in which the CRS can be used (rear-facing, forward-facing, booster). This is a change from the current requirement which only requires manufacturers to provide an overall weight and height of the children who can occupy the CRS. This final rule also specifies that the forward-facing mode of a CRSs that can be used forward-facing may only be recommended [7] for children with a minimum weight of 12 kg (26.5 lb). The minimum weight of 12 kg (26.5 lb) is an increase over the current threshold of 9 kg (20 lb) (S5.5.2(k)(2)). The weight threshold of 12 kg (26.5 lb) is the weight of a 95th percentile one-year-old.[8] Thus, for example, for convertible [9] child restraints systems, a manufacturer must use a turnaround weight of not less than 12 kg (26.5 lb). This change will increase the number of children under age 1 transported rear-facing, which is critical to child safety. Children under age 1 must be transported rear-facing because, until at least age 1, their neck is not developed enough to withstand crash forces imposed by their head when positioned forward-facing in a frontal crash. When riding rear-facing, they can take the brunt of the crash forces through their back, which is stronger than the neck.

Further, this rule specifies that booster seats may only be recommended for children with a minimum weight of 18.4 kg (40 lb), which increases the current threshold of 30 lb (S5.5.2(k)(2)).[10] This change increases the likelihood that 3- and 4-year-olds will be transported in CRSs with an internal harness which better protects them at that young age than booster seats.[11] Children will still transition to booster seats, but just when they are a little larger. The purpose of these labeling provisions is to increase the likelihood that caregivers will use CRSs in the safest possible ways.

5. This final rule makes the following changes to simplify and make more representative the agency's use of test dummies in compliance tests (S7). For a CRS recommended for use rear-facing by children weighing 10 kg to 13.6 kg (22 to 30 lb), it will be subject to NHTSA testing while rear-facing with just the 12-month-old child test dummy (Child Restraint Air Bag Interaction (CRABI–12MO)) and will no longer be subject to rear-facing tests with the Hybrid III 3-year-old (HIII–3YO) test dummy.[12] This change better aligns the dummy used in tests of infant carriers [13] with the size and weight of children typically restrained in infant carriers.

This rule also specifies that CRSs labeled for children weighing 13.6 kg to 18.2 kg (30 to 40 lb) will not be tested with the 22 lb CRABI–12MO.[14] This change makes NHTSA's compliance tests more reflective of real-world CRS use, as discussed in sections below (Section IX.b). This final rule adopts the proposed procedure for positioning the 3-year-old child test dummy's legs when the dummy is rear-facing. The procedure is similar, if not identical, to that currently used by many manufacturers. For CRSs recommended for children in the 18.2 kg to 29.5 kg (40 to 65 lb) weight range, NHTSA amends FMVSS No. 213 to specify testing solely with the Hybrid III–6-year-old (HIII–6YO) child dummy and no longer with the older Hybrid 2 version of the dummy (H2–6YO). The purpose of these amendments is to heighten the assessment of CRS performance in protecting a child occupant.

6. This final rule amends FMVSS No. 213 to permit more types of add-on [15] CRSs specially designed for exclusive use on school buses than currently permitted. The intent is to facilitate the availability of child restraints that are only used on school buses.

*How This Final Rule Differs From the NPRM*

For the convenience of the reader, we highlight below the noteworthy differences between the NPRM and this final rule. More minor changes are not highlighted here but are discussed in the sections relevant to the topic (*e.g.,* use of a lap shield when using the HIII–6YO weighted dummy in belt-positioning seats). All amendments are discussed in the appropriate sections of this preamble.

The final rule differs from the 2020 NPRM by:

- Making minor changes (many of which were suggested by commenters) to the proposed standard seat assembly design (specifying stronger parts, tolerances, etc.) to strengthen its design and remove potential sources of variability;
- Making conforming changes and corrections to the drawing package for the updated standard seat assembly;
- Retaining the current requirement that child restraint systems be capable of anchoring to a vehicle seat by way of a Type 1 (lap) belt until September 1, 2029, to ensure the availability of CRSs to parents and caregivers that have older model vehicles;

[6] A ''harness'' is defined in Standard 213 as a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child (S4).

[7] When we describe a child restraint as ''recommended for'' or ''labeled for'' children of a certain height or weight range, we mean the child restraint manufacturer is selling, marketing, labeling or otherwise describing the CRS as suitable for children in that height or weight range.

[8] A 50th percentile 1-year-old weighs 9.9 kg (22 lb).

[9] A convertible CRS is a type of CRS with an internal harness to secure the child that can be used rear-facing and forward-facing. It is used rear-facing with infants (or small toddlers if the CRS weight recommendations allow it), and, forward-facing with older and larger children. The CRS manufacturer instructs the consumer when to turn the convertible CRS around to face forward, based on the weight of the child (''turnaround'' weight).

[10] An 18.4 kg (40 lb) threshold corresponds generally to the weight of a 97th percentile 3-year-old (17.7 kg (39.3 lb)) and an 85th percentile 4-year-old.

[11] Booster seats are and continue to be a critical type of child restraint needed to restrain children properly in vehicles. As noted earlier, NHTSA instructs caregivers that children should be restrained in a CRS for the child's age and size. From birth through adulthood, children should be restrained first using a CRS used rear-facing, then a forward-facing CRS, then a booster seat, and finally, the vehicle's seat belts. *https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#age-size-rec.*

[12] Dummy selection is also done by height. Details of the dummy selection is discussed later in the preamble. See Table 13 of this preamble.

[13] An infant carrier is a rear-facing CRS designed to be readily used in and outside of the vehicle. It has a carrying handle that enables caregivers to tote the CRS plus child outside of the vehicle. Some come with a base that stays inside the vehicle onto which the carrier attaches.

[14] If the CRS were also labeled as suitable for use by children weighing less than 13.6 kg (30 lb), then the CRS would be subject to testing with the CRABI–12MO. Dummy selection is also done by height. Details discussed later in the preamble.

[15] ''Add-on child restraint system'' is defined in S4 of FMVSS No. 213 as ''any portable child restraint system.''

- Retaining a provision in FMVSS No. 213 that child harnesses will be tested with a Type 1 seat belt installation; and,
- Not adopting a provision to use the 12-month-old CRABI (CRABI–12MO) dummy when testing child restraints that can be used in a forward-facing mode, provided that when the CRS is recommended for use forward-facing, it is recommended forward-facing only with children weighing a minimum of 12 kg (26.5 lb).

*Estimated Benefits and Costs*

This final rule provides safety benefits, with some temporary costs and long-term savings. The agency estimates potentially 0.7 to 2.3 lives will be saved and 1.0 to 3.5 moderate-to-critical severity injuries prevented with some labeling changes in this final rule. NHTSA cannot quantify the possible safety benefits of some amendments to the standard at this time. NHTSA estimates a one-time cost of $9,300 for each manufacturer that chooses to purchase or produce an updated standard seat assembly. This cost impact is considered minimal when distributed among the hundreds of thousands of CRSs that will be sold by each manufacturer. There is a temporary (3 years) additional yearly cost for testing CRSs with Type 1 seat belts of $5,198,000. NHTSA also estimates annual test cost savings of $3,091,200 for the current number of infant carrier models (10 kg to 13.6 kg (22 to 30 lb)) in the market that will no longer be tested with the HIII–3YO and the CRSs that can be used forward-facing that will no longer be tested with the CRABI–12MO. This is a net annual cost increase of $2,116,100 for each of the first three years and a net annual cost savings of $3,091,200 per year after the first three years.

Updating the Standard Seat Assembly and Testing With Type 2 Belts

The updates to the sled test and testing with Type 2 belts better aligns the performance of CRSs in compliance tests to that in real world crashes. NHTSA believes there would be benefits from making the FMVSS No. 213 standard seat assembly more representative of vehicle rear seats, but quantification of the associated benefits/costs is not possible at this time due to a lack of data to make such an assessment.

There are only minimal costs involved in changing to the updated standard seat assembly used by NHTSA to assess CRS compliance. Manufacturers are not required to use the updated standard seat assembly, but as a practical matter they usually choose to do so. The one-time cost of the updated standard seat assembly sled buck is about $9,300. Whether a manufacturer chooses to build the updated standard seat assembly itself or uses one at an independent test facility, cost impacts are minimal when distributed among the hundreds of thousands of CRSs that will be sold by each manufacturer. We are retaining the Type 1 belt test for an additional 3 years (2029) so there will temporarily be additional annual test costs of $5,198,000 for testing with the Type 1 belt up to the year 2029.

NHTSA estimates that there will be little or no increased costs to child restraint systems to meet FMVSS No. 213's requirements when tested on the updated standard seat assembly. The agency's test data of representative CRSs in the fleet show that virtually all CRSs would meet the standard's requirements when tested on the updated standard seat assembly.

CRS Owner Registration Program

The changes to the registration form provide flexibility to manufacturers in how they communicate with consumers and will likely help improve registration rates and recall completion rates. However, NHTSA cannot quantify the benefits at this time. The agency estimates there would be no costs associated with the changes as they lessen restrictions and are optional for manufacturers to implement if their registration forms comply with current requirements. While the changes could affect the collection of information pursuant to the Paperwork Reduction Act (discussed later in this preamble), there will be no additional material cost associated with the changes to the registration form. Manufacturers could use the same cards and just change the wording on them.

Labeling

The agency believes that the updates to the labeling requirements will benefit safety by reducing the premature transition of children from CRSs that can be used rear-facing to CRSs that can be used forward-facing, and from CRSs that can be used forward-facing to booster seats. The agency estimates potentially 0.7 to 2.3 lives will be saved and 1.0 to 3.5 moderate-to-critical severity injuries prevented annually by raising the manufacturer-recommended minimum child weight for the use of CRSs with internal harness that can be used forward-facing from 9 kg (20 lb) to 12 kg (26.5 lb). NHTSA also estimates potentially 1.2 to 4 lives will be saved and 1.6 to 5.2 moderate-to-critical injuries prevented by raising the manufacturer-recommended minimum child weight for use of booster seats from 13.6 kg (30 lb) to 18.2 kg (40 lb).

The changes to the labeling requirements will have minimal or no cost impacts. Manufacturers may provide the recommended child weight and height ranges for the use of CRSs in a specific installation mode on existing voluntary labels by simply changing the minimum child weight limit values. Since this final rule does not require additional information on the label, the size of the label will not need to be increased.

There will also be no decrease in sales of forward-facing CRSs with internal harnesses or of booster seats because of this rule's raising the minimum child weight limit values for forward-facing CRSs with internal harnesses and booster seats. Most forward-facing CRSs with internal harnesses cover a wide child weight range, so the labeling changes will only affect how consumers use the products and not the sale of them. For example, consumers will still purchase forward-facing CRS with internal harnesses but will just wait to use them until the child is at least one year old. They will still purchase convertible [16] CRSs but will delay turning the child forward-facing until the child is at least one year old. Consumers will still purchase booster seats but will use them when the child reaches 18.2 kg (40 lb) rather than 13.6 kg (30 lb).

Dummies (Also Called Anthropomorphic Test Devices (ATDs))

The updates to how NHTSA will use dummies in the compliance tests better accords with current CRS designs, best practices, and consumer use for transporting children compared to the current requirements in FMVSS No. 213. NHTSA cannot quantify the possible safety benefits at this time.

While manufacturers are required to certify their products meet the requirements of FMVSS No. 213 when tested in accordance with the standard and exercise due care in doing so, they are not specifically required to test their CRSs the way NHTSA tests child restraints in a compliance test. Assuming manufacturers choose to conduct the tests specified in FMVSS No. 213 to make their certifications of compliance, NHTSA estimates there will be no cost increases associated with the amendments.

[16] A convertible CRS is a type of CRS with an internal harness to secure the child that can be used rear-facing and forward-facing.

Some of the changes lessen testing burdens by reducing the extent of testing with dummies. For example, the rule specifies that CRSs for children weighing 10 kg to 13.6 kg (22 to 30 lb) will no longer be required to certify the seats meet the requirement with the HIII–3YO dummy. NHTSA estimates a reduction in testing cost of $717,600 for the current number of infant carrier models in the market. Child seats for children weighing 13.6–18.2 kg (30–40 lb) will no longer be required to be certified with the CRABI–12MO. The final rule also provides that CRSs used in the forward-facing mode will no longer be required to be certified using the CRABI–12MO dummy. NHTSA estimates a reduction in testing cost of $2,373,600 for the forward-facing CRSs that will no longer be tested with the CRABI–12MO. The positioning procedure for the legs of the HIII–3YO dummy in CRSs used rear-facing is unlikely to have cost implications because the procedure is similar, if not identical, to that currently used by many manufacturers.

NHTSA believes there are only minimal costs associated with NHTSA's testing CRSs with the HIII–6YO dummy instead of the H2–6YO dummy. This is because there are likely to be little or no design changes to CRSs since nearly all the CRSs tested with the HIII–6YO in the updated standard seat assembly complied with the applicable FMVSS No. 213 requirements.[17] Some commenters (Graco, JPMA, Dorel and Evenflo) opposed the proposal as they believe chin-to-chest contacts have not been resolved. NHTSA's testing showed that CRSs that currently comply with FMVSS No. 213 using the H2–6YO dummy also met all the performance requirements in the standard when tested using the HIII–6YO dummy on the updated standard seat assembly. Manufacturers are increasingly certifying at least some of their CRS models for older children using the HIII–6YO dummy rather than the H2–6YO and so for these manufacturers with these CRSs, the amendment will have no effect.

School Bus Child Restraint Systems

The amendments to FMVSS No. 213 include allowing new types of CRSs manufactured for exclusive use on school bus seats. There may be benefits associated with the manufacture and sale of CRSs for preschool and children with special needs, but NHTSA cannot quantify these benefits at this time.

## II. Safety Need and NHTSA Strategies

*a. 2020 Fatalities*

Of the 38,825 traffic fatalities in 2020 in the United States, 755 were of child passenger vehicle occupants ages 0–14 years old. Of these 755 fatalities, restraint use was known for 680 of the children. Two hundred eighty-six (286) (42%) were unrestrained, 176 (26%) were children restrained in a child restraint system, 209 (31%) were children restrained with a seat belt, and 9 (1%) were children restrained with an unknown type of restraint.

There were 53 infants (under 1 year old) killed, with restraint use known for 48 of them. Of these 48 fatalities, 13 (27%) were unrestrained.

There were 128 children 1 to 3 years old killed, with restraint use known for 118. Of these 118 fatalities, 39 (33%) were unrestrained.

There were 207 children 4 to 7 years old killed; restraint use was known for 186. Of these 186 fatalities, 80 (43%) were unrestrained.[18]

*b. NHTSA Strategies*

NHTSA reduces child traffic injuries and fatalities through programs implemented in many program areas.

1. Increase CRS Use

NHTSA is actively involved in increasing CRS use. We conduct national campaigns to educate the public about the importance of restraining children with CRSs and work with stakeholders to get these messages out. These efforts include developing and distributing training videos, producing public safety announcements and various campaigns directed to caregivers of children (in English and Spanish), leveraging all communication resources (such as social media and the NHTSA website) to provide information to parents and other caregivers.

We teach caregivers about the kinds of restraints that are best suited to protect child occupants of various ages.[19] NHTSA recommends that from birth to 12 months, children ride in a rear-facing car seat, and from 1 to 3 years they should be rear-facing as long as possible and then move to a harnessed and tethered forward-facing seat when they outgrow the rear-facing seat. From ages 4 to 7, children should ride in the harnessed and tethered forward-facing car seat until they outgrow the seat, then ride in a booster seat. From ages 8 to 12, children should be in a booster seat until they are big enough to fit a vehicle seat belt properly.[20]

NHTSA works with State and local authorities to support child restraint use laws. The Bipartisan Infrastructure Law continues the 23 U.S.C. 405(b) Occupant Protection grant program that incentivizes States to adopt and implement effective occupant protection programs to reduce highway deaths and injuries resulting from individuals riding unrestrained or improperly restrained in motor vehicles.

To qualify, all States must demonstrate an active network of child passenger safety inspection stations based on the State's problem identification. States must provide the total number of planned inspection stations and/or events in the State; and tell NHTSA how many of those events serve urban, rural, and at-risk populations. States must certify that inspection stations are staffed with at least one current Nationally Certified Child Passenger Safety Technician. Additionally, to qualify for an Occupant Protection incentive grant, States must provide plans and projects for recruiting, training, and maintaining a sufficient number of child passenger safety technicians based on the state's problem identification.

States with seat belt use rates below 90 percent must submit additional information to qualify, which may include demonstrating that the State has enacted and is enforcing a primary enforcement seat belt or child restraint statute and/or that the State has enacted and is enforcing occupant protection statutes with specified criteria such as requiring all occupants be secured in an age-appropriate child restraint.

Trends in Restraint Use [21]

As a general trend we see more children staying in each CRS type

[17] As discussed in the NPRM, of 21 tests with the HIII–6YO on the new seat assembly, all passed the performance metrics, except for one that failed head excursion limits.

[18] Source: *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813285.*

[19] The agency uses the term ''car seat'' or ''car safety seat'' rather than ''child restraint system'' in messages to caregivers, as the former terms are more commonly known and understood by laypersons than the latter. Consistent with plain language principles, this preamble uses these layperson's terms from time to time.

[20] *https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#age-size-rec.*

[21] Sources: NSUBS—National Survey for the Use of Booster Seats—Multiple years; Enriquez, J. (2021, May). The 2019 national survey of the use of booster seats (Report No. DOT HS 813 033), NHTSA 813033 (*dot.gov*); Li, H.R., & Pickrell, T. (2018, September). The 2017 National Survey of the Use of Booster Seats (Report No. DOT HS 812 617). Washington, DC: NHTSA 812617 (*dot.gov*); Li, H.R., Pickrell, T.M., & KC, S. (2016, September). The 2015 National Survey of the Use of Booster Seats (Report No. DOT HS 812 309). Washington, DC: NHTSA 812309 (*dot.gov*); Pickrell, T.M., & Choi, E–H. (2014, June). The 2013 national survey of the use of booster seats. (Report No. DOT HS 812 037).

longer. Older/heavier children are restrained in CRS used rear-facing, forward-facing CRS and booster seats longer before transitioning to the next kind of CRS partly because of the increased availability of CRSs sold for larger children, CRS best practice recommendations such as those cited above from NHTSA, and State child restraint laws. The trends below are positive developments aligned with increased safety outcomes.

Looking at restraint type use by age from 2011 to 2019 we see the following trends:

Children <1 year old
- Increase of CRSs used rear-facing from 83% to 91.7%
- Decrease of forward-facing CRS use from 11% to 5.7% (decrease mostly because more children of this age group are remaining rear facing longer)

Children 1–3 years old
- Increase of CRSs used rear-facing from 7% to 17.4%
- Decrease of forward-facing with internal harness CRS use from 75% to 66.3% (decrease mostly because more children of this age group are remaining in rear-facing longer)
- Decrease of belt-positioning seat (BPS) use from 11% to 7.5% (decrease due to more children of this age group are remaining in forward-facing with internal harness CRSs longer)

Children 4–7 years old
- Increase of forward-facing CRS use from 18% to 32.5%
- Decrease of BPS use from 46% to 37% (decrease due to more children of this age group remaining in forward-facing with internal harness CRSs longer)
- Decrease of seat belt only use from 25% to 16% (decrease due to more children of this group remaining in BPSs or forward-facing with internal harness CRSs longer)

Looking at restraint type use by child weight from 2011 to 2019 we see the following trends:

Children 0–20 lb
- Increase of CRS used rear-facing from 89% to 92.4%
- Decrease of forward-facing with internal harness CRS use from 9% to 4.2% (decrease mostly because more children of this weight group are remaining rear facing longer)

Children 21 to 40 lb
- Increase of CRSs used rear-facing from 7% to 15.2%
- Decrease of forward-facing CRS use from 61% to 58% (decrease mostly because more children of this weight group are remaining rear facing longer)
- Decrease of belt-positioning seat (BPS) use from 20% to 9% (decrease due to more children of this weight range remaining in forward-facing with internal harness CRSs)
- Decrease of seat belt only use from 6% to 5%

Children 41–60 lb
- Increase of forward-facing with internal harness CRS use from 11% to 23.5%
- Decrease of BPS use from 45% to 39% (decrease partially because more children of this weight group are remaining in forward-facing with internal harness CRSs longer)
- Decrease of seat belt only use from 34% to 25.1% (decrease partially due to more children of this weight range remaining in BPSs or forward-facing with internal harness CRSs longer)

While trends of CRS use for children 0–4 years old have remained constant, we have seen an increase in CRS use for older children. NSUBS data from 2009 and 2019, shows that there's been an increase in CRS use from 55 to 69.7 percent in children 4–7 years old and 6 to 14.9 percent in children 8–12 years old. Based on child's weight, there has been an increase of CRS use from 43 to 62.5 percent among children weighing 41–60 pounds and an increase from 7 to 15 percent among children weighing more than 60 pounds.

This final rule amends FMVSS No. 213 to reflect the above trends in CRS use and design. We have better aligned the certification requirements for CRSs with the size and weight of children typically restrained by the various CRS types in use today.

2. Increase Correct Use

NHTSA's programs work to increase correct use of child restraints. We work to make CRSs easier to use through rulemaking and other means. FMVSS No. 213 has requirements to ensure caregivers can attach any child restraint system, other than a school bus child restraint system, to any vehicle seat using just a seat belt.[22] The agency has also established Standard 225, ''Child restraint anchorage systems,'' to require vehicles to have a standardized and easy to use dedicated anchorage system in certain vehicle rear seating positions that caregivers can use with a simple one-handed motion to attach a CRS. FMVSS No. 213 requires CRSs to have permanently attached components that can attach to the dedicated system. NHTSA requires child restraint manufacturers to provide information directly to owners informing them of the proper use of child restraint systems. NHTSA rates CRSs on their ease of use in a consumer information program under NHTSA's New Car Assessment Program (NCAP). The NCAP program not only assists caregivers when making purchasing decisions, but also incentivizes manufacturers to improve the ease of correctly using child seats. NHTSA conducts national campaigns to educate the public about the importance of buckling children into child restraint systems, supports efforts by State and local organizations that would like to establish CRS fitting stations,[23] and works with partners to train educators that can teach the public about using child restraints.

FMVSS No. 213 requires manufacturers to provide safety information labeled on each CRS instructing caregivers on the correct use of the restraint. This final rule amends the standard to enhance the labeling requirements. For example, we are improving the labeling requirements to require manufacturers to provide information on when to transition a child to each specific mode in which the car seat can be used (rear-facing, forward-facing, booster). We are requiring that caregivers must not be instructed to turn children forward-facing until reaching 26.5 lb, and that boosters cannot be recommended for children under 40 lb. But we are also permitting manufacturers more leeway in how they communicate with caregivers, so designers can find ways to provide use instructions that their customers will read, understand, and follow.

3. Strengthen FMVSS No. 213 and Address Safety Defects

NHTSA undertakes rulemaking to ensure child restraint systems are as protective as possible. We review FMVSS No. 213 regularly and frequently to see how the standard

Washington, DC: NHTSA 812037 (*dot.gov*); Pickrell, T.M., & Ye, T.J. (2013, April). The 2011 National Survey of the Use of Booster Seats. (Report No. DOT HS 811 718). Washington, DC: NHTSA 811718 (*dot.gov*).

[22] NHTSA also has requirements in Standard 208, ''Occupant crash protection,'' to require seat belts to meet lockability requirements so that they may be easily locked for use with CRSs.

[23] These are places within a community where caregivers can learn how to install and properly use child restraints. Some places provide a certified technician that provides hands on support, fitting the caregiver's child seat into their vehicle. To find a CPS Technician go to *https://portalskcms.cyzap.net/dzapps/dbzap.bin/apps/assess/webmembers/secure/manage?webid=SKCMS&pToolCode=CERT-SEARCH&pAdd=Yes* (last accessed April 21, 2023).

could be strengthened to protect against unreasonable safety risks.

Child restraint systems are highly effective in reducing the likelihood of death and injury to children in motor vehicle crashes. NHTSA estimates that, for children less than 1 year old, a child restraint can reduce the risk of fatality by 71 percent when used in a passenger car and by 58 percent when used in a pickup truck, van, sport utility vehicle (SUV), or other multipurpose passenger vehicle (these non-passenger car vehicles together are known as light truck and van vehicles, or LTVs). Child restraint effectiveness for children between the ages of 1 and 4 years old is a very high 54 percent in passenger cars and 59 percent in LTVs.[24]

FMVSS No. 213 specifies performance requirements that must be met in a dynamic frontal sled test involving a 48 kilometer per hour (km/h) (30 mile per hour (mph)) velocity change, which is representative of a severe crash. Each child restraint system is tested with a dummy while attached to a standardized seat assembly representative of a passenger vehicle seat (standard seat assembly).[25] FMVSS No. 213 has many safety benefits, a few of which are enumerated here. FMVSS No. 213 requires child restraint systems to limit the amount of inertial load that can be exerted on the head and chest of the dummy during the dynamic test. The standard requires child restraint systems to meet head excursion [26] limits to reduce the possibility of head injury from contact with vehicle interior surfaces and ejection. Child restraint systems must also maintain system integrity (*e.g.,* not fracture or separate in such a way as to harm a child) and have no contactable surface that can harm a child in a crash. The standard ensures belt webbing can safely restrain the child, and that buckles can be swiftly unlatched after a crash by an adult—but cannot be easily unbuckled by an unsupervised child. Child restraint systems other than booster seats and harnesses [27] must meet performance requirements when attached to the standard seat assembly with the vehicle's seat belt, and, in a separate assessment, with only the lower anchorages of a child restraint anchorage system.[28] The CRSs must meet more stringent head excursion requirements in another test where a top tether, if provided, may be attached. Belt-positioning (booster) seats are tested on the standard seat assembly using a Type 2 (lap and shoulder) belt.

NHTSA continues to work to improve FMVSS No. 213. In June 2022, NHTSA added side impact requirements to the standard.[29] The agency's work on side impact requirements involved developing a dynamic sled test, a new child test dummy, and child injury criteria.[30] In January 2015, NHTSA proposed to amend FMVSS No. 225 to improve the ease of use of the lower anchorages of child restraint anchorage systems and of the tether anchorage.[31] NHTSA is continuing its work on the Standard 225 rulemaking and will issue a final decision at a later date.

As part of the agency's work on FMVSS No. 213, this final rule will modernize the standard, with emphasis on the standard seat assembly. We believe, however, that the change to the updated standard seat assembly will not significantly affect the performance of CRSs in meeting FMVSS No. 213. As discussed in the NPRM preceding this final rule,[32] NHTSA tested a wide variety of CRS designs in the market using the updated standard seat assembly. The CRSs had been certified by their manufacturers as meeting FMVSS No. 213's performance criteria using the current standard seat assembly in the standard (which is representative of designs of older vehicle seats). In the tests on the updated standard seat assembly, most CRSs also met the standard's performance requirements.[33]

In 1992, NHTSA established a CRS owner registration program in FMVSS No. 213 [34] (S5.8) to increase the ''completion rate'' of recalled restraints, *i.e.,* the percentage of recalled units sold to consumers for which the consumer contacts the manufacturer for free remedy of the defect or noncompliance.[35] With this program, owners can be directly notified of safety recalls. This final rule improves the program to increase the likelihood that owners will be motivated to register with manufacturers to learn directly whether their CRS was recalled.

## III. Statutory Authority

This final rule is issued under the Safety Act (49 U.S.C. 30101 *et seq.*) and MAP–21.

### *a. National Traffic and Motor Vehicle Safety Act (Safety Act)*

Under the Safety Act, the Secretary of Transportation [36] is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[37] ''Motor vehicle safety'' is defined in the Safety Act as ''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.'' [38] ''Motor vehicle safety standard'' means a minimum performance standard for motor vehicles or motor vehicle equipment.[39] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information, and consider whether a

[24] Traffic Safety Facts—Children 2012 Data (April 2016). *https://crashstats.nhtsa.dot.gov/Api/Public/Publication/812491.* Last accessed on January 3, 2023.

[25] FMVSS No. 213 specifies the use of test dummies representing a newborn, a 12-month-old, 3- and 6-year-old, weighted 6-year-old, and 10-year-old child. The dummies other than the newborn are equipped with instrumentation measuring crash forces, but NHTSA restricts some measurements from the weighted 6-year-old and 10-year-old dummies due to technical limits of the dummies.

[26] Head excursion refers to the distance the dummy's head translates forward in FMVSS No. 213's simulated frontal crash test.

[27] These types of child restraint systems are defined in S4 of FMVSS No. 213.

[28] Commonly called ''LATCH,'' which refers to *L*ower *A*nchors and *T*ethers for *Ch*ildren, a term industry developed to refer to the child restraint anchorage system required by FMVSS No. 225 for motor vehicles (49 CFR 571.225, ''Child restraint anchorage systems''). A child restraint anchorage system consists of two lower anchorages, and one upper tether anchorage. Each lower anchorage includes a rigid round rod, or ''bar,'' onto which a hook, a jaw-like buckle or other connector can be snapped. The bars are located at the intersection of the vehicle seat cushion and seat back. The upper tether anchorage is a ring-like object to which the upper tether of a child restraint system can be attached. FMVSS No. 213 requires CRSs to be equipped with attachments that enable the CRS to attach to the vehicle's child restraint anchorage system.

[29] Final rule, 87 FR 39234, June 30, 2022, established FMVSS No. 213a; Child restraint systems—side impact protection. The compliance date for the requirements is June 30, 2025, with NHTSA permitting optional early compliance with the requirements.

[30] The final rule fulfilled a MAP–21 mandate in § 31501(a) that NHTSA issue a final rule to improve the protection of children seated in child restraint systems during side impacts.

[31] Ease-of-use NPRM, 80 FR 3744; January 23, 2015. Initiation of the rulemaking was part of a 2011 NHTSA priority plan and is called for by MAP–21 (§ 31502(a)).

[32] NPRM, *supra,* 85 FR at 69389, col. 3.

[33] During NHTSA's testing with the updated standard seat assembly, there were four CRSs models that failed head excursion limits: Britax Marathon and Britax Frontier reported in this final rule's Appendix A, as well as the Evenflo Titan Elite and Diono Radian R120 reported in the NPRM.

[34] 57 FR 41428.

[35] NHTSA also issued the rule to assist the agency in determining whether manufacturers met their recall notification responsibilities under the Safety Act, and to motivate owners to register CRSs for recall notification purposes.

[36] The responsibility for promulgation of Federal motor vehicle safety standards is delegated to NHTSA. 49 CFR 1.95.

[37] 49 U.S.C. 30111(a).

[38] 49 U.S.C. 30102(a)(8).

[39] 49 U.S.C. 30102(a)(9).

standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed.[40] The Secretary must also consider the extent to which the standard will further the statutory purpose of reducing traffic crashes and associated deaths and injuries.[41]

*b. MAP–21*

MAP–21 incorporates Subtitle E, ''Child Safety Standards.'' Section 31501(b)(1) of Subtitle E requires that not later than 2 years after the date of enactment of the Act, the Secretary [42] shall commence a rulemaking proceeding to amend the standard seat assembly specifications under Federal Motor Vehicle Safety Standard Number 213 to better simulate a single representative motor vehicle rear seat. Section 31501(b)(2) states that not later than 4 years after the date of the enactment of the Act, the Secretary shall issue a final rule pursuant to paragraph (1).

*c. NHTSA's Views*

NHTSA is issuing this final rule under Safety Act authority and MAP–21. Section 31501(b)(2) of MAP–21 directs NHTSA to issue a final rule amending the standard seat assembly of FMVSS No. 213. NHTSA believes that, in requiring a final rule amending ''Federal Motor Vehicle Safety Standard Number 213,'' Congress's intent is that the rulemaking on the standard seat assembly will accord with the requirements and considerations for FMVSSs under the Safety Act.

## IV. Guiding Principles

We undertake our rulemakings on FMVSS No. 213 with the following principles and considerations in mind. We weigh these factors in addition to the considerations and requirements for FMVSS specified by the Safety Act, statutory mandates, Executive Order (E.O.) 12866,[43] and other requirements for agency rulemaking. NHTSA articulated these guiding principles in the NPRM.[44] We have announced these principles in other rulemakings involving the standard.[45]

Child restraint misuse is high, but even with misuse, child restraints are highly effective in reducing the likelihood of death and/or serious injury in motor vehicle crashes. As discussed above, based on real-world data, child restraint effectiveness for children between the ages 1 to 4 years old is 54 percent in passenger cars and 59 percent in light trucks. The failure to use occupant restraints is a significant factor in most fatalities resulting from motor vehicle crashes.

In making regulatory decisions on possible enhancements to Federal standards, the agency must bear in mind the consumer acceptance of cost increases to an already highly effective item of safety equipment and whether an enhancement that could raise the price of the restraints could potentially have an adverse effect on the sales of this product. The net effect on safety could be negative if the effect of sales losses on usage rates exceeds the benefit of the improved performance of the restraints. To maximize the total safety benefits of extending and upgrading its restraint requirements, the agency balances those improvements against the real-world impacts on the price of restraints. NHTSA also weighs the effects of improved performance on the ease of correctly using child restraints. We consider whether an amendment may cause child restraints to become overly complex or frustrating for caregivers and the risk that a requirement could unintentionally exacerbate misuse and nonuse of child restraints.

## V. Overview of the NPRM and Comments Received

*a. Summary of the NPRM*

NHTSA published the NPRM for this final rule on November 2, 2020 (85 FR 69388). We extended the comment period to April 5, 2021 (86 FR 47; January 4, 2021) in response to petitions under 49 CFR 553.19 from the Juvenile Products Manufacturers Association (JPMA) and the Children's Hospital of Philadelphia (CHOP). (This summary is brief because it mirrors the description of the final rule provided in the Executive Summary, *supra.*)

1. NHTSA proposed to update the standard seat assembly used in the frontal dynamic test.[46] NHTSA proposed to test CRSs with the Type 2 belt system and to phase out use of the Type 1 belt. NHTSA did not include a vehicle floor and explained its reasons for denying a petition for rulemaking that had requested a floor. We discussed in the NPRM several test programs we conducted to assess the performance of child restraints on the proposed standard seat assembly.[47] In one of the final test series in the NPRM phase, NHTSA performed 40 tests using 24 CRS models across 10 brands available in the marketplace using the proposed standard seat assembly (V2).[48]

The results showed that changing to the updated standard seat assembly had almost no effect on the ability of the CRS to pass the frontal dynamic crash requirements of FMVSS No. 213. Results showed the following:

*Infant carriers and convertibles positioned rear-facing and tested with the CRABI–12MO or the HIII–3YO dummies:* We tested six (6) CRS models with the CRABI–12MO dummy and tested 4 with the HIII–3YO dummy. All the child restraints met all the frontal dynamic crash requirements evaluated during this set of tests.

*Forward-facing CRSs tested with the HIII–3YO dummy:* We tested one (1) CRS model with tether attached and two (2) CRS models without tether attached. All child restraints met all the frontal dynamic crash requirements evaluated during this set of tests.

*Forward-facing CRSs tested with the HIII–6YO dummy:* Four (4) CRSs tested with the tether attached met all the frontal dynamic crash requirements evaluated during this set of tests. Four (4) CRS models were tested without the tether attached. All met all the frontal dynamic crash requirements evaluated during this set of tests.

*Forward-facing CRSs tested with the Hybrid III 10-year-old (HIII–10YO) dummy:* One (1) CRS model was tested with the tether attached and 2 CRS models were tested without the use of the tether. The CRS tested with the tether attached met all frontal dynamic crash requirements evaluated during this set of tests. The CRSs tested without the tether met all frontal dynamic crash requirements evaluated during this set

[40] 49 U.S.C. 30111(b).

[41] Id.

[42] Authority delegated to NHTSA. 49 CFR 1.95(p)(2).

[43] E.O. 12866, ''Regulatory Planning and Review,'' September 30, 1993, as amended by E.O. 14094.

[44] 85 FR at 69404, col. 2. (Discussion of NHTSA's decision not to raise the crash pulse in FMVSS No. 213's compliance test.)

[45] See, *e.g.,* final rule, FMVSS No. 213a side impact requirements, 87 FR at 39243, col. 1, *supra.*

[46] The NPRM included a proposal to incorporate by reference a drawing package containing detailed drawings of the proposed standard seat assembly. A description of the materials proposed for incorporation by reference can be found at 85 FR at 69443, col. 1.

[47] Section VII of the NPRM preamble, 85 FR 69409–69424.

[48] During the development of the NPRM the agency worked with two design levels of the preliminary standard seat assembly and the term ''V2'' is referring to one of them. The initial standard seat assembly design (V1) used in some sled tests during the development of the design only differed from the proposed standard seat assembly (V2) in minor ways. The initial standard seat assembly used in these sled tests had a shorter seat back height and slightly different seat belt and child restraint anchorage locations. NHTSA performed tests on the proposed standard seat assembly (V2) of some of the CRSs that were tested on V1 standard seat assembly; results showed no significant difference in CRS performance on the two standard seat assemblies.

of tests, except for one that exceeded the head excursion limit.

*Booster seats with the HIII–6YO dummy:* We tested six (6) booster seat models and all met all frontal dynamic crash requirements evaluated during this set of tests.

*Booster seats with the HIII–10YO dummy:* We tested three (3) booster seat models and all met all frontal dynamic crash requirements evaluated during this set of tests.

2. The NPRM proposed to reduce the restrictions on the content and format of the owner registration form manufacturers must provide with new CRSs for purposes of direct recall notifications (S5.8).

3. NHTSA proposed to amend labeling requirements so that manufacturers have more flexibility in informing and instructing caregivers about correctly using child restraints (S5.5), but with caveats, *e.g.,* forward-facing CRSs must not be recommended for children weighing less than 12 kg (26.5 lb) and booster seats must not be recommended for children weighing less than 18.4 kg (40 lb).

4. NHTSA proposed to streamline the agency's use of test dummies in compliance tests (S7) to make the dummies more representative of the children for whom the CRS is recommended. The NPRM proposed to phase out a provision that permitted, at the manufacturer's choice, an option of certifying CRSs using the H2–6YO dummy instead of a more advanced Hybrid III dummy.

5. The NPRM proposed miscellaneous amendments. These included permitting more types of CRSs designed for exclusive use on school buses than are currently permitted, updating a reference to an SAE Recommended Practice J211, and several housekeeping amendments to delete or clarify various provisions in the standard.

6. The NPRM also requested comment on a separate document discussing several developments in child passenger safety, including research studies that raise safety concerns associated with inflatable belt-positioning seats and a shield-only type of child restraint emerging in markets overseas.[49] The document also discusses our observations that children are outgrowing the height limits of some rear-facing infant carriers long before they outgrow the weight limits. NHTSA asked whether height and weight limits should better match.

*b. Summary of the Comments*

The NPRM received over 29 comments or other submissions to the docket. Commenters included child restraint manufacturers (JPMA, Dorel Juvenile Group, Graco Children's Products, Britax Child Safety, Inc., Cybex, Evenflo, Safeguard/IMMI, BubbleBum); consumer advocates (the American Academy of Pediatrics, Advocates for Highway and Auto Safety, Safe Ride News (SRN), Safety Belt Safe (SBS), the National Safety Council, Consumers Reports); research bodies and testing organizations (Insurance Institute for Highway Safety (IIHS), CHOP, University of Michigan Transportation Research Institute (UMTRI), MGA Research Corporation); vehicle manufacturers, suppliers, and associations (Volvo, the Automotive Safety Council (ASC), the National Automobile Dealers Association (NADA), Transport Research Laboratory); and entities directly involved with pupil transportation (the National Association for Pupil Transportation (NAPT), Salem-Keizer Public Schools). Additionally, the People's Republic of China submitted a comment, as did several members of the general public.

Overview of the Comments

There was wide support overall for the NPRM. All commenters on the issue supported updating the standard seat assembly, but some expressed concern about specifics of the proposed standard seat assembly. Graco raised concerns about the repeatability and reproducibility (R&R) of test results using the proposed standard seat assembly and JPMA and some of its member companies had questions about the cushion foam. Some commenters addressed technicalities of the proposed standard seat assembly and/or test conditions and procedures (*e.g.,* limits on belt webbing elongation, placement of cameras, methods for measuring the firmness of seat foam). Some suggested ways the proposed standard seat assembly and test could be revised to reduce potential sources of variability. Two wanted the Type 1 belt retained on the seat assembly, as they believed the Type 1 belt test should remain in FMVSS No. 213 to ensure the availability of child seats to persons owning older vehicles that only have Type1 belts in rear seating positions.

There was strong support overall for the proposed changes to the owner registration form and the labeling requirements, but several consumer advocates cautioned that too much flexibility in form and content may reduce the familiarity, and utility, of the form and labels. There was unanimous support for the provision that booster seats should not be recommended for children under 40 lb, but several were concerned about shortcomings with a study we had cited. Commenters overall supported the changes to the agency's use of test dummies in compliance tests, but JPMA and some individual manufacturers opposed phasing out the optional use of the H2–6YO dummy.

Many commenters provided input on issues that were outside of the scope of the rulemaking. Many commenters suggested changes to the proposed standard seat assembly regarding features they believed should be included on the standard seat assembly, but which were not proposed, such as a floor, or a front seat positioned forward of the standard seat assembly.[50] Consumer Reports suggested use of a weighted 12-month-old test dummy. JPMA reiterated a concern it has about Standard 302's flammability resistance requirement incorporated into FMVSS No. 213 (S5.7), and the People's Republic of China commented that it believes the flammability resistance standard for child restraint systems is too strict and should be harmonized with international standards to avoid a large use of flame retardants. Several comments responded to the January 13, 2020, document discussing NHTSA's concerns about data related to certain child restraint system designs.

All issues raised in relevant comments are discussed below in this preamble. Comments outside the scope of the rulemaking generally will not be further addressed in this document but are considered by NHTSA as suggestions for future revisions to FMVSS No. 213.

Some commenters brought up a few test procedures or regulatory provisions that they believe would make the criteria for determining compliance with FMVSS No. 213 clearer, or test results more repeatable and reproducible. NHTSA agrees generally the suggestions have merit but does not believe they should be adopted in this final rule. The Administrative Procedure Act requires that interested persons be given notice of proposed rulemaking and an opportunity to comment thereon prior to an agency's adopting changed requirements as a final rule (5 U.S.C. 553). Thus, to provide interested persons an

[49] Child Passenger Safety Issues Arising from Research Findings. January 13, 2020. Docket No. NHTSA–2020–0093–0013 at *https://www.regulations.gov/*.

[50] The front seat would be used to assess if child restraints prevent dummy head strikes against the seat back.

opportunity to comment on possible changes to the test procedures, we are preparing an NPRM to tighten up some aspects of the adopted standards. The upcoming NPRM would include: a conforming amendment to FMVSS No. 213a (side impact protection) that the CRABI–12MO would not be used forward-facing to test CRSs that are recommended not for use forward-facing with children weighing less than 12 kg (26.5 lb); a procedure to ensure tightness of a CRS to consistent levels when there is insufficient free webbing on which to use a three-prong tension gauge; and a dummy rear head drop test to calibrate the responses of the HIII–3YO dummy. The upcoming NPRM would have a comment period that would provide any interested persons with the chance to comment on the changes while allowing the agency to moye promptly to incorporate the changes into FMVSS No. 213 and No. 213b.

## VI. Updating the Representative Standard Seat Assembly

This final rule amends the standard seat assembly specified by FMVSS No. 213 to better simulate ''a single representative motor vehicle rear seat,'' as directed by § 31501(b) of MAP–21.[51] The updated standard seat assembly has one seating position. The updated standard seat assembly's features are aligned with (and, in many respects, identical to) the seat assembly used to test child restraint systems for compliance with FMVSS No. 213a, ''Child Restraint Systems—Side Impact Protection.'' Comments to this topic supported the alignment of the sleds in both standards.[52] This final rule includes specifications for the geometry of the seat (*e.g.,* seat back angle, seat pan angle and length, seat back height), seat cushion characteristics (*e.g.,* stiffness of the cushions and thickness of the foams), and the means (seat belt systems and child restraint anchorage system) for attaching a CRS to the seat. The report, ''Development of a Representative Seat Assembly for FMVSS No. 213,'' September 2016, which was docketed with the NPRM, explained how we developed the specifications for the seat.[53]

The agency used data from a 2012 research program (Vehicle Rear Seat Study) to assess the representativeness of the current FMVSS No. 213 standard seat assembly and to develop an updated standard seat assembly.[54] The Vehicle Rear Seat Study surveyed vehicles in the U.S. vehicle fleet to compile data on the rear seat environment. The study measured 43 individual rear seating positions in 24 model year (MY) 2010 vehicles. Measurements were made of features that included seat back angle and height, seat pan width, stiffness of the seat cushion, location of seat belts and locations of child restraint anchorage systems.[55]

The Vehicle Rear Seat Study measured the vehicles' seat geometry and anchorage locations using a Seat Geometry Measuring Fixture (SGMF). The SGMF consisted of two wooden blocks (600 mm × 88 mm × 38 mm) and a 76 mm (3 inches) hinge (see Figure 1 below). To make the rear seat geometry measurements, the SGMF was positioned on the centerline of each rear seating position. Point A (see Figure 1), which corresponds to the hinge location of the SGMF, was the reference point for all measurements.

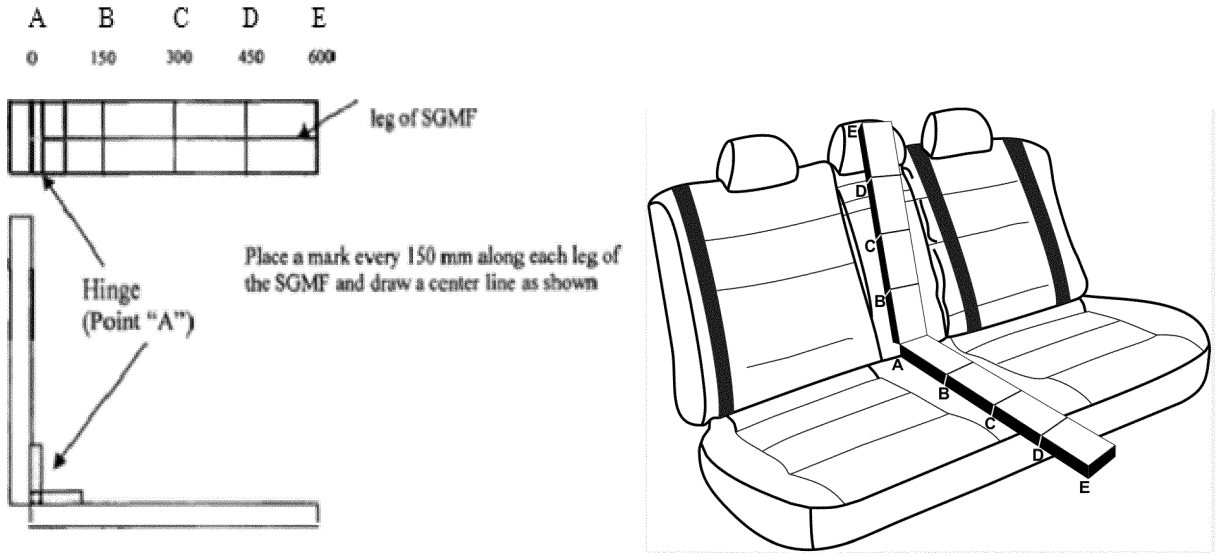



**Figure 1. SGMF sketch (left), SGMF positioned in a vehicle rear (center) seating position.**

[51] This final rule incorporates by reference a final drawing package with the detailed drawings of this final rule's standard seat assembly. The drawing package is discussed in detail in this preamble and can be found in the docket for this final rule and elsewhere. See the section titled Incorporation by Reference in the ''Regulatory Notices and Analyses'' section of this preamble, *infra.*

[52] The 2020 NPRM preceding this final rule sought comment on the issue of consistency between the seat assemblies used in the side and frontal impact tests. 85 FR 69394, col. 2. The commenters responding to this issue strongly supported aligning the two seat assemblies as reasonably possible. NHTSA also discussed this issue in the 2022 final rule establishing the MAP–21 CRS side impact requirements. We explained in that side impact rule that we adopted a seat assembly that is aligned as possible with the FMVSS No. 213 frontal impact test assembly. 85 FR 39261–39262; June 30, 2022.

[53] *https://www.regulations.gov/document/NHTSA-2020-0093-0005.* 85 FR at 69397.

[54] Aram, M.L., Rockwell, T., ''Vehicle Rear Seat Study,'' Technical Report, July 2012. Report available in the docket for the 2020 NPRM preceding this final rule (Docket No. NHTSA–2020–0093).

[55] 68 FR 37620, June 24, 2003. The 2020 NPRM has more background on NHTSA's work developing this final rule's updates to the standard seat assembly (see Section III, 85 FR at 69393).

*a. Seat Geometry*

1. Seat Back Angle

This final rule specifies a seat back angle of 20 degrees for the updated standard seat assembly, as proposed in the NPRM. The Vehicle Rear Seat Study found that the average seat back angle of the surveyed vehicles was 20 degrees from vertical, with a standard deviation of 4 degrees.[56] The seat back angle ranged from a minimum of 9 degrees to a maximum of 28 degrees from vertical. The value is representative of the seat back angles found in the vehicle fleet (within one standard deviation of the average values in the current fleet). No commenter opposed adopting this seat back angle. The seat back angle will simplify the change to a updated standard seat assembly because it will be the same as the angle of the current FMVSS No. 213 test seat assembly and that of the seat for the side impact test.

2. Seat Pan Angle

This final rule adopts the proposed seat pan angle of 15 degrees. No commenter opposed adopting this seat pan angle. The measurement is representative of seat pan angles found in the vehicle fleet (within one standard deviation of the average values in the current fleet).[57] The seat pan angle is the same as the angle of the current FMVSS No. 213 standard seat assembly and that of the side impact standard seat assembly.

3. Seat Pan Length

This final rule adopts the proposed seat pan length of 412 mm (16.2 inches). No commenter opposed adopting this seat pan length dimension. The measurement is representative of seat pan length found in the vehicle fleet (within one standard deviation of the average values in the current fleet).[58]

4. Seat Back Height

This final rule adopts the proposed seat back height of 573 mm (22.5 inches) for the updated standard seat assembly. No commenter opposed adopting this dimension. The Vehicle Rear Seat Study showed that the average height of the seat back was 688 mm (27 inches) with a standard deviation of 76 mm (3 inches) when the head restraint was included and 578 mm (22.7 inches) with a standard deviation of 60 mm (2.3 inches) when the head restraint was not included in the measurement.[59] The final rule's dimension of 573 mm (22.5 in) is within one standard deviation of the average seat back height when the head restraint is not included. The updated standard's seat assembly does not include a head restraint.[60]

*b. Rear Seat Cushion Characteristics*

The standard seat assembly's seat cushion is made up of a seat cover and seat foam. In drafting the NPRM, the agency developed a new seat foam that was representative of the current U.S. vehicle fleet after finding that foams used in test programs overseas were not representative of U.S. vehicles. We sought to propose a foam that was representative of foams used in vehicle seats, as measured in terms of thickness, stiffness, and density. We also sought a foam that would not ''bottom out'' (fully compress) on to the rigid backing during the demanding conditions of a compliance test. We proposed to specify properties of a foam manufactured by The Woodbridge Group (Woodbridge),[61] which we referred to as the ''NHTSA-Woodbridge seat cushion.'' The NPRM described the proposed foam by its thickness, indentation force-deflection (IFD) test results, compression-force deflection (CFD) test results, and density.[62] [63]

1. Thickness—Seat Back Cushion

For the seat back cushion, NHTSA proposed to use the NHTSA-Woodbridge seat cushion foam with a 50.8 mm (2 inch) thickness. A 50.8 mm (2 inch) thickness is representative of seat back cushions in the fleet. The Vehicle Rear Seat Study showed that the overall seat back cushion thickness for outboard and center seating positions was 76 mm (3 inches) with a standard deviation of 29 mm (1.14 inches), measured at the centerline of the seating position. The seat back cushion thickness of 50.8 mm (2 inches) is within 1 standard deviation of the average seat back cushion thickness in the vehicle fleet.

Another consideration we had for the proposal was that, while NHTSA does not believe that the seat back cushion significantly affects a CRS's dynamic performance in the frontal sled test, a seat back cushion on the thicker side could be a potential source of variability when testing CRSs with top tethers. When the tether is tightened, the back cushion can be compressed to varying degrees. Data does not indicate that differences in compression necessarily affect CRS performance, but NHTSA explained that a 50.8 mm (2 inch) thick foam would reduce such differences and thus facilitate a more repeatable installation. The agency noted also that specifying a 50.8 mm (2 inch) thickness streamlines the FMVSS No. 213 compliance test. Foam manufacturers readily produce foams in 101.6 mm (4 inch) sections. A 101.6 mm (4 inch) thick foam slab can be easily cut into two 50.8 mm (2 inch) pieces to be used for the seat back.

No commenter opposed adopting the proposal on the seat back cushion thickness. This final rule adopts the proposal for the reasons in the NPRM.

2. Thickness—Seat Bottom Cushion

NHTSA proposed a thickness of 101.6 mm (4 inches) for the bottom seat cushion foam. A 101.6 mm (4 inch) thickness would be representative of the seat cushions in real world vehicles. The Vehicle Rear Seat Study found an average seat pan cushion thickness for both outboard and center seating positions of 90 mm (3.5 inches) with a standard deviation of 40 mm (1.5 inches), measured at the centerline of the seating position.[64] A 101.6 mm (4 inch) seat cushion foam thickness for the seat pan also has the advantage of simplifying procurement of the foam since foam standard specifications are typically provided by the manufacturer in 101.6 mm (4 inches) samples, as specified in test method B1 of ASTM D3574, ''Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams.''

Comments Received

After the agency submitted the NPRM to the **Federal Register** in September 2020 and placed a copy on NHTSA's website, JPMA contacted NHTSA via email on October 15, 2020 to ask about the foam.[65] JPMA focused on a technical

[56] The current seat back angle of the FMVSS No. 213 standard seat assembly is 20 degrees.

[57] The Vehicle Rear Seat Study found that the average seat pan angle was 13 degrees from the horizontal, with a standard deviation of 4 degrees.

[58] The Vehicle Rear Seat Study found that the average seat pan length was 16.3 inch (416 mm), with a standard deviation of 38 mm (1.5 inches).

[59] The current FMVSS No. 213 standard seat assembly has a seat back height of 20.35 inch (517 mm) and it does not have a head restraint.

[60] The final drawings for the updated standard seat assembly include for optional use an ATD Head Protection Device to protect the head of the dummy from damage when tested in backless booster seats. This is discussed in more detail later in the preamble.

[61] The Woodbridge Group is a supplier of automotive seat foam, *http://www.woodbridgegroup.com.*

[62] The IFD test measures the force required for 25 percent, 50 percent, and 65 percent deflection of the entire product sample. The CFD test measures the force required to compress a sample of the foam (50 mm (1.96 inch) by 50 mm and 25 mm (0.98 inch) thickness) by 50 percent.

[63] 85 FR at 69397.

[64] The current FMVSS No. 213 standard seat assembly seat pan cushion has a thickness of 152.4 mm (6 inch).

[65] The ex parte communication was documented here: Docket No. NHTSA–2020–0093–0050, at *https://regulations.gov/.*

report [66] describing the use of adhesives to produce a foam of the requisite size for the proposed seat cushion. JPMA stated it preferred not using adhesives and asked NHTSA about an approach where JPMA would invest in a mold to produce a foam with the desired dimensions without adhesive use. JPMA asked if one-piece foams would be acceptable and whether the foam should have skin or not. NHTSA responded by stating that the proposed specifications did not have provisions for or against gluing or about skins. NHTSA noted that the agency had used adhesives and that the skin of the foam did not affect the performance in our testing.[67]

JPMA commented that they were planning to initiate a test project to evaluate the foam at different laboratories and that JPMA would share their results when ready. On December 15, 2021, JPMA met virtually with NHTSA to present its research findings.[68]

In the meeting, JPMA urged NHTSA to reduce the tolerance provided for the thickness of the foam. JPMA said it observed that the specified foam thickness and density tolerances allow for inconsistent test results separately and more so if the thickness and density variation within the tolerance are combined.[69] JPMA stated that the inconsistencies in test results would be higher when the combined effect of the tolerances of foam thickness and density are considered. In its comments to the NPRM, Graco had also expressed concerns regarding the effect of foam thickness tolerance on results. Graco stated that the seat pan cushion is nominally 102 millimeters (mm) (4.00 inches) thick with a tolerance of ±12.7 mm (±0.50 inches); and the seat back cushion is nominally 51 mm (2.00 inches) thick with a tolerance of ±6.4 mm (±0.25 inches). Graco argued that the current foam pieces have a tolerance on their thicknesses of ±1/8 inches (±3.2 mm). Graco recommended that the tolerance be reduced to the minimum amount feasible to better ensure repeatable and reproducible test results.

In JPMA's ex parte meeting with NHTSA on December 15, 2021, JPMA presented its research findings on the effect of foam thickness. JPMA procured seat foams with three thicknesses spanning the proposed tolerance range [70] and tested in four configurations. The four configurations included the CRABI–12MO, HIII–3YO, HIII–6YO, and HIII–10YO dummies in rear-facing, forward-facing and belt positioning CRSs. It presented pictures of pre-test positioning of the dummies in the CRS to show how the foam thicknesses affected the positioning of the dummies.

JPMA then presented data on how the foam thicknesses affected the injury measures in the different tests. Results were mixed as the foam thickness variability contribution ranged from 3.1 percent to 87.5 percent depending on the CRS/dummy configuration and injury measure. Overall, in tests with the CRABI–12MO dummy in a CRS used rear-facing (3.1 to 28.6 percent) and the HIII–6YO in a forward-facing CRS (9.2 to 24.7 percent), the foam thickness variation had the least effect on injury measures, while in tests with the HIII–3-year-old in a forward-facing CRS, the foam thickness variation had the most effect on injury measures (30 to 87.5 percent). JPMA concluded that the variation in foam thickness resulted in greater than 10 percent variation in 15 out of the 17 dummy response measures. JPMA also suggested adding a flatness specification to reduce variation in foam surface profile.

Agency Response

NHTSA is reducing the seat foam cushion thickness tolerance from 4 ± 0.5 inches to 4 ± 0.25 inches. NHTSA reviewed JPMA's data presented at the virtual meeting. JPMA claimed that the results of testing with the wide range of thicknesses (3.5 in., 4 in. and 4.5 in.) resulted in foam thickness variability contribution from 3.1 percent to 87.5 percent depending on the CRS/dummy configuration and injury measure. JPMA presented data of its testing and calculated the coefficient of variation (CV) values when taking all tests of the same CRS tested at the different foam thicknesses ranging 3.5 to 4.5 inches. The approximate calculations showed CV values under 10 percent which is still within the variability expected of the testing. Therefore, even if the foam contributed to variability to some extent, the variability is still within a reasonable range. However, NHTSA believes it is feasible to procure foams with a smaller tolerance without any additional burden and agrees that 0.5-inch tolerance in a 4-inch foam might be unnecessarily wide. Therefore, this final rule specifies a 0.25-inch thickness tolerance for the seat foam bottom cushion.

With regard to a requested flatness specification, we understand this request as seeking a specification that will ensure the foam slab has to have the same ''thickness'' throughout the slab. We did not adopt a flatness specification as we have reduced the tolerance for the foam slab thickness. With the reduced tolerance, even if variations are present, they will be small and inconsequential.

3. Foam Stiffness

NHTSA proposed specifications for the stiffness of the bottom seat cushion after comparing the stiffness of rear seat cushions in the fleet to that of the seat cushions used in various test programs, including FMVSS No. 213. NHTSA first measured the quasi-static stiffness (force-deflection) of the seat cushions in rear seats of 13 passenger vehicles (Model Years 2003–2008).[71] Next, since CRSs are tested on the FMVSS No. 213 standard seat assembly in a dynamic sled test, NHTSA also evaluated the dynamic stiffness of the various seat cushions. NHTSA believed that the stiffness of the NHTSA-Woodbridge seat cushion satisfactorily represents the average seat cushion stiffness found in the vehicle fleet and did not bottom out in the severe impact tests we conducted (35 g at 56.3 kilometers per hour (km/h) or 35 mph using heavy test dummies restrained in heavy child restraints).[72]

Comments Received

In its comments to the NPRM, Graco presented its assessment of the potential effects of Indention Force-Deflection (IFD) [73] values close to both ends of the tolerance zone. For one of Graco's seats (Seat H [74]), the IFD was measured and recorded before each dynamic test. Graco's data showed that increasing the IFD strongly correlated to increased chest resultant accelerations.

[66] Wietholter, K., Louden, A., & Echemendia, C. (2016, September). Development of a representative seat assembly for FMVSS No. 213. Washington, DC: National Highway Traffic Safety Administration. Docket No. NHTSA–2020–0093–0005. (p. 18)

[67] The reference was to Wietholter, K., Louden, A., Sullivan, L., ''Evaluation of Seat Foams for the FMVSS No. 213 Test Bench,'' June 2016, *https://www.regulations.gov/document?D=NHTSA-2013-0055-0013.*

[68] The ex parte communication was documented here: Docket No. NHTSA–2020–0093–0050 at *https://regulations.gov/.*

[69] A tolerance limit is a measure used to ensure the uniformity of an item. Any item that falls outside of the specified tolerance limit is deemed outside of the specification.

[70] Thickness of three seat foam samples were 112.31mm, 102.01 mm and 93.19 mm.

[71] NPRM, 85 FR at 69395. Wietholter, K., Louden, A., and Sullivan, L. ''Evaluation of Seat Foams for the FMVSS No. 213 Test Bench,'' June 2016 available in the docket for the NPRM.

[72] NPRM, 85 FR at 69398.

[73] Indentation Force Deflection (IFD) tests measure firmness of flexible polyurethane foam cushions. High IFD test results imply increased stiffness.

[74] For details of Graco's data see comments at Docket No. NHTSA–2020–0093–0035 attachment titled ''Graco comment NHTSA 2020 0093 Att A.''

Graco explained that IFD values can be affected by foam density and overall thickness and, potentially, by temperature and humidity conditions during storage. Graco recommended that, in addition to tightening the tolerance on the thickness, NHTSA should reduce the permitted tolerance range of new foam IFD and provide guidance on the acceptable ranges of temperature and humidity for proper foam storage. Graco noted that Appendix C[75] of NHTSA's Research Test Procedure describes the practice that was followed by NHTSA's Vehicle Research and Test Center (VRTC) in testing that NHTSA conducted in developing the NPRM, but that this information was not in the NPRM or addressed in the current NHTSA's Compliance Test Procedure (TP–213–10).

Agency Response

NHTSA would like to begin by explaining the difference between the agency's ''Research Test Procedure'' and NHTSA's Compliance Test Procedure. The ''Research Test Procedure'' is the procedure that NHTSA's VRTC developed and used during the development of this rulemaking. This Research Test Procedure is generally aligned with NHTSA's proposal for FMVSS No. 213 and has been used by NHTSA in various ways to inform the agency's decision-making developing the proposal. This Research Test Procedure offers details for interested readers on how NHTSA conducted the tests (*e.g.,* which camera placements were used, how excursions were measured, CRS targeting for dynamic measurements, foam storage and testing protocols, etc.). NHTSA's ''Compliance Test Procedures'' describe procedures NHTSA uses for compliance testing and are administered by NHTSA's Office of Vehicle Safety Compliance (OVSC) as guidance.[76] The Compliance Test Procedures are consistent with FMVSS No. 213 as set forth in the Code of Federal Regulations, and is used as a contractual document between OVSC and the test lab contractor to describe the procedures that the contractor is to use to conduct an OVSC compliance test identified in the Test Procedure. The procedure in the Compliance Test Procedure falls within the parameters described in the test procedure set forth in the corresponding Federal Motor Vehicle Safety Standard. NHTSA considers the lessons learned from the agency's research when writing the Compliance Test Procedures, but the Compliance Test Procedures could differ from the research procedures to address agency needs and interests that arise during administration of NHTSA's compliance test programs.

The Research Test Procedure NHTSA used for developing the updated FMVSS No. 213 sled, including the foam, was published along with the NPRM.[77] The Research Test Procedure (and accompanying test reports) shed light on NHTSA's decision-making for the proposal, but do not serve as regulation. NHTSA is developing the Compliance Test Procedure and will consider what was learned about IFD testing and foam storage during the research work when drafting the Compliance Test Procedure administered by OVSC.

This final rule adopts the proposed stiffness characteristics for the seat cushion for the reasons in the NPRM. The stiffness of the NHTSA-Woodbridge seat cushion is satisfactorily representative of the average seat cushion stiffness found in the vehicle fleet.

In response to Graco's suggestion to narrow the IFD specifications, we have not found a need to do so. While there may be some response changes to the chest acceleration (or other values) that depend on the IFD values, the changes Graco presented also showed good repeatability with a CV of 7 for chest accelerations on Seat H and under 10 percent CV for Graco's other tested seats. The variations in performance measures caused by the proposed range of IFD values were still within acceptable variability levels, and, therefore, will be adopted in this final rule.

JPMA asked why the tolerances of the IFD Procurement Specifications were different than the Certification Specifications.

In response, NHTSA believes the following background is helpful. The proposed drawings in the NPRM indicated Procurement and Certification specifications for the seat pan and seat back foams. The specifications serve different purposes. Procurement specifications are verified by the foam manufacturer or distributor when the foam is sold. Certification specifications are verified prior to sled testing by the laboratory performing the test. The procurement specification tests measure the density and the compression force deflection (CFD) of a foam and identify the foams that are suitable for FMVSS No. 213 testing. They are destructive tests (a specimen piece of the produced foam is cut off to perform the tests) and, therefore, cannot be repeated multiple times before dynamic sled testing for FMVSS No. 213. The indentation force deflection (IFD) tests are not destructive tests, and at procurement, the foam manufacturer or distributor can perform IFD tests to also identify the foam characteristics. Once the foam has been procured, the Certification specifications, which only indicate IFD characteristics, can be used to certify and ensure that the foam has the required IFD characteristics prior to sled testing. Because IFD characteristics are highly susceptible to the environment they are in, a procured foam that has been exposed to different temperatures and humidity levels might have different IFD characteristics than those used for procurement. The foam certification (IFD) tests, conducted prior to testing, ensure that the foams are within the specified IFD ranges. The final drawing package incorporated by reference by this final rule also includes the Procurement and Certification specifications.

NHTSA established procurement specifications that differed from certification specifications for the same foam for the following reasons. First, NHTSA recognized that some foam suppliers use an industry standard test protocol, including specified sample sizes, when publishing foam specifications. Because these sample sizes are not the same size as what NHTSA will use for compliance testing, these data used to procure foam will not necessarily match the data on the actual foam samples used in NHTSA's compliance testing. Thus, while the procurement data are useful to identify potential foam that could be used in compliance tests, the agency made the specifications provided for procurement ''for reference'' as a guideline. The specifications that are binding for the purposes of compliance tests are those that meet the certification specifications. Those certification specifications are included in the table titled ''Test Certification Specifications for 4 [inch] and 2 [inch] Foams'' in drawings numbers 3021–233 and 3021–248 of the drawing package referenced in the updated standard by this final rule.

Second, given the variation in foam characteristics due to temperature and humidity changes, procurement specifications with tighter tolerances make it easier for NHTSA's OVSC to have suitable foams available for testing.

[75] NHTSA's ''Research Test Procedure'' for the Proposed FMVSS No. 213 Frontal Impact Test can be found in Docket No. NHTSA–2020–0093–0016.

[76] The Compliance Test Procedures for all of the Federal Motor Vehicle Safety Standards can be found here: *https://www.nhtsa.gov/vehicle-manufacturers/test-procedures.*

[77] NHTSA Research Procedure for the Proposed FMVSS No. 213 Frontal Impact Test can be found in Docket No. NHTSA–2020–0093–0016.

A larger tolerance for testing with the purchased foam is desired so that more of the purchased foam is within specifications at the time of testing. The purchased foams will be exposed to different temperatures and humidity levels throughout their useful life, and, as a result, their IFD characteristics will vary throughout time. Having a wider IFD specification range is beneficial to ensure foams can be reasonably certified for dynamic testing. Foams within the certification IFD specification ranges produced FMVSS No. 213 repeatable and reproducible dynamic test results.[78]

IFD Test Procedure Consistency

In the December 2021 meeting with JPMA, JPMA recommended against creating a new unique procedure in Draft TP–213 ''Laboratory Test Procedure for FMVSS 213 Child Restraint Systems'' that deviates from ASTM D3574 and Woodbridge test methods. JPMA also recommended specifying the test method for certifying the foam blocks as either the latest version of ASTM D3574 (not the 2011 version) or a method matching how Woodbridge currently tests foam for certification at time of procurement.

Agency Response

JPMA suggests following Woodbridge specific IFD testing or ASTM D3574 without deviation. With regard to the Woodbridge-specific IFD, we cannot agree with the suggestion. NHTSA would not be able to follow the Woodbridge IFD testing methodology in all instances because Woodbridge is not the only source of foam. Each supplier will likely have different scientifically sound methods to evaluate IFD.

With regard to ASTM D3574, NHTSA agrees that referencing the ASTM D3574 standard in the drawing package where the foam specifications are indicated could improve consistency in foam testing. This final rule therefore incorporates by reference ASTM D3574 in the drawing package. However, following the ASTM D3574 standard without deviation is not possible. The foam sample specified in the ASTM D3574 (15 X 15 inches) differs from the foam sample size available from the seat cushion (19 X 28 inches) and seat back (22 X 28 inches). ASTM D3574 specifies sample thickness to be 4 inches whereas the seat back cushion of the updated standard seat assembly is only 2 inches thick. Also, the ASTM D3574 standard measures IFD values at 25% and 65%, while FMVSS No. 213 foam certification measures IFD of 50% (25% and 65% are measured only for reference). The drawing package notes where the procedure differs from the ASTM standard. This is discussed in detail below in the paragraph entitled, ''Comment on ASTM Reference.''

Response to Comment on Density

JPMA and Graco's reference to foam density is unclear. JPMA and Graco referred to foam density and thickness as sources of IFD variation but all of JPMA's data are specific to the variation in sample thickness. We did not see any data on density variation. We assume JPMA's comment is trying to tie density to IFD, (*i.e.,* a foam that is significantly less dense (softer) than the one we proposed might not yield the IFD values we proposed) as it is often thought that higher density foams are stiffer than lower density ones.[79] In response to that point, we do not believe a change to the density specification is needed, as our response to the comment on the IFD addresses the density aspect. As explained above, even with foam sample IFD differences, the dummy responses still produced results that were within 10 percent CV, indicating good repeatability.

4. Miscellaneous Issues

Comment on Industry-Produced Molds

JPMA suggested there should be a long-term effort, that NHTSA should support, whereby the CRS industry builds new molds for the standard seat assembly bottom and back foam blocks so the thickness, flatness and dimensions of the foam blocks can be controlled within tight specifications and tolerances. As it described this suggestion, JPMA believed that these changes would result in (1) consistent block thickness which will reduce dynamic test score variations, as well as a consistent block surface finish and surface profile; (2) alignment on how vehicle manufacturers mold the foam for vehicle seating surfaces; (3) all laboratories conducting FMVSS No. 213 testing on the updated standard seat assembly with the same foam blocks; (4) lower per piece cost as cutting and gluing operations would be eliminated; and (5) foam blocks produced with CRS Industry funded molds that would be accessible to everyone.

Agency Response

We are encouraged that the industry has thought of an approach where it could possibly develop a foam mold to procure foam more easily and consistently for FMVSS No. 213 testing purposes. However, the agency is cautious about an FMVSS No. 213 specification that may result in a single source for a component used in compliance testing, such as the standard seat assembly foam. NHTSA seeks for the foam to be available from multiple merchants. Also, the agency believes this approach of an industry-developed mold is an interesting one but there are factors the agency must thoroughly consider. For example, we believe the molds would have to be made available to everyone with no restrictions on use and would have to be used in a process anyone could use. NHTSA is also mindful that a mold would only be useful for a limited time, as the standard seat assembly is subject to updates.

Comment on Foam Procurement

Dorel comments that its conversations with Woodbridge indicated there may be challenges to meeting the foam specifications in the NPRM. Dorel urges NHTSA to confirm that the specifications are practicable and capable of being met by suppliers to avoid market disruption for inability to certify compliance.

In response, NHTSA does not know of any challenges Woodbridge has in meeting the specifications since they developed the specifications and have been successfully supplying the foam for several years. NHTSA also did market research and identified other sources from which the foam could be procured.[80] NHTSA procured these non-Woodbridge foams to confirm that the foam is not a single sourced item and that these foams have the same performance as the Woodbridge foam.[81]

Comment on ASTM Reference

Dorel states that there was a difference between the NPRM, and a 2015 NHTSA memorandum related to an ASTM reference. Dorel states that the NPRM [82] references the 2003 update to the American Society for Testing and Materials (ASTM) D3574–03 ''Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams'' (ASTM D3574–03). The commenter notes the 2015 memo indicates the 2011 revision to that

[78] Documented in technical report docketed in NHTSA–2020–0093–0029.

[79] NHTSA recognizes that this is not always true as there is no direct correlation between density and stiffness (firmness). There can be low density foams with high stiffness. Link: *https://www.pfa.org/foam-performance/.*

[80] Foam Feasibility Study Final Report—June 2018. Docket No. NHTSA–2020–0093–0012 at *https://regulations.gov/.*

[81] Louden, A.E., Wetli, A.E. (2020 December). Evaluation of Foam Specifications for Use on the Proposed FMVSS No. 213 Test Bench. Washington, DC: National Highway Traffic Safety Administration. Docket No. NHTSA–2020–0093–0029, at *https://regulations.gov/.*

[82] Preamble section III.c.5.i (85 FR 69395).

standard, ASTM D3574–11, is used to create the compression force deflection (CFD) specifications. Dorel asks NHTSA to clarify which version of the test standard it will reference.

In response, while the foam specifications were developed using, in general, the test methods of ASTM D3574–11, some aspects were adjusted. In response to the comment, NHTSA has added a note on the drawing package explaining that the full (seat pan and seat back) foam sample size and 50 percent indentation is tested in lieu of the ASTM D3574–11 requirement(s): ''Foam IFDs are measured on the full-size sample, using the test methodology and apparatus described in ASTM Standard D3574–11 at 50% indentation. 25% and 65% are collected for reference only.'' For instance, the required samples sizes for ASTM D3574 testing are to be 15 x 15 x 4 inches while the size of the seat pan foam is 19 x 28 x 4 inches and the seat back foam is 22 x 28 x 2 inches. NHTSA also makes CFD measurements at 25 percent (for reference only), 50 percent and 65 percent (for reference only), whereas the ASTM D3574 standard only makes CFD measurements at 25 percent and 65 percent. Therefore, NHTSA's testing followed the ASTM D3574 test procedures generally but adjusted them for practical reasons.

The drawing package has been updated to reference the ASTM D3574–11 but with explanations of the differences with NHTSA testing, including those relating to sample size and the additional 50 percent CFD measurement. The foam drawings 3021–233 and 3021–248 lists values for reference; the foam used in a specific test does not need to meet the 25 percent and 65 percent IFD values listed in these tables for the test to be valid. During its research program, NHTSA concluded that these values do not impact the results of the dynamic test but were helpful as reference points to monitor the condition of the foam. The 25 percent and 65 percent IFD values therefore were included in the drawing package for reference.

*c. Means for Attaching a CRS to the Standard Seat Assembly*

1. Seat Belts

FMVSS No. 213 currently states that CRSs are attached to the standard seat assembly with a Type 1 and not a Type 2 belt.[83] To ensure continued effective CRS performance in today's vehicles, NHTSA proposed to require all CRSs to meet the performance requirements of FMVSS No. 213 while attached to the seat assembly with a Type 2 [84] (lap/shoulder belt). The NPRM proposed to amend the CRS frontal collision test by, among other things, specifying that NHTSA would use the Type 2 belt to attach child restraints to the seat assembly in a test. With the prevalence of Type 2 belts in the rear seats of vehicles sold today, the NPRM proposed to delete, as obsolete, the current provisions to use the Type 1 belt. NHTSA proposed the change with the view that testing CRSs with the type of seat belt caregivers are likely to use better ensures that the test is representative of real-world conditions. Also, the agency believed the change to a Type 2 belt would be inconsequential as test data do not indicate any significant difference in performance in current child restraint designs when installed using a Type 1 versus a Type 2 belt.[85]

All commenters support the proposal to use Type 2 belts to anchor child restraints to the standard seat assembly. The National Safety Council, Consumer Reports, Volvo, and Salem-Keizer Public Schools support testing of CRSs with the use of Type 2 belts as they are more representative of the vehicle fleet. However, while supporting the use of Type 2 belts, SBS and SRN also strongly oppose removing the Type 1 belt testing specification in FMVSS No. 213. SBS and SRN urge NHTSA to retain the Type 1 belt test, at least for a while longer, to meet the needs of persons who may own vehicles that do not have Type 2 belts in rear seats.

After reviewing the comments, we have decided to adopt the proposed provisions about including Type 2 belts on the updated seat assembly and testing child seats while anchored with the Type 2 belts. Also, as discussed in detail in a section below, this final rule retains the Type 1 belt test until September 1, 2029. Thus, this final rule includes specifications for Type 1 and Type 2 belts on the new standard seat assembly.

Type 1 Belt Specifications

The specifications for the Type 1 (2-point) belt anchorages are the same as the Type 1 belt anchorages of the Type 2 (3-point) seat belts. Although the Vehicle Rear Seat Study [86] shows that center vehicle seat Type 1 seat belt anchorages (where Type 1 seat belts are available), are closer together than in outboard vehicle seats, narrower spacing can cause potential interference with wide CRSs. This interference could affect the setup of the CRS on the standard seat assembly. While the average spacing between the anchorages in a rear center seating position in the vehicle fleet is 355 mm, the spacing ranged between 232 mm to 455 mm. The lap belt anchorages of the Type 2 seat belt anchorages in the standard seat assembly have a spacing of 450 mm. While this spacing is greater than the average spacing of the lap belt anchorages of rear center seats in the vehicle fleet, it is still within the range found in the vehicle fleet.

Type 2 Belt Specifications

The agency has adopted specifications for the Type 2 belt as proposed in the NPRM. The agency determined the location of the anchorages based on requirements of FMVSS No. 210, ''Seat belt anchorages,'' and the data from the Vehicle Rear Seat Study. We also adjusted the anchorage placement to ensure a compliance test could be conducted without interference between the seat belt and the vehicle seat assembly, or the child restraint and a seat belt anchorage. Five commenters (the National Safety Council, Salem-Keizer schools, Volvo, Safe Ride News and Consumer Reports) commented in support of the proposal to incorporate Type 2 belts into FMVSS No. 213's protocols. No commenter opposes the inclusion of Type 2 belts into FMVSS No. 213. NHTSA will incorporate a Type 2 belt into FMVSS No. 213 and the standard seat assembly as proposed.

[83] FMVSS No. 213 S5.3.2. *See* also NHTSA, Test Procedures, TP–213–10, February 16, 2014. Note that belt-positioning (booster) seats are currently tested with a Type 2 belt.

[84] The Type 1 and Type 2 seat belt assemblies in the current and updated standard seat assemblies simulate these seat belt types in vehicles, by having anchorage locations representative of vehicles, and webbing that conforms with FMVSS No. 209. The configuration and webbing of the seat belt assemblies and location on FMVSS No. 213's standard seat assembly reproduce relevant aspects of the vehicle environment in a manner that is controlled for compliance testing purposes. These seat belt types in the standard seat assembly do not meet all FMVSS No. 209 provisions as regards having retractor buckles, other fasteners, or hardware designed for installing such seat belt assembly, but those differences are minor and generally do not affect CRS performance. However, the belt retractor on the standard seat assembly is fixed, which differs from retractors on real-world vehicles that allow some spooling-out of webbing before locking in a crash-imminent situation. As discussed in sections below, NHTSA has research underway to develop a retractor that better replicates real-world retractors, that could provide a more thorough assessment of child restraint system performance in the real world. NHTSA plans to develop the retractor and eventually propose the retractor in a future rulemaking.

[85] See results of test numbers 8917, 8922, 8919, 8923, 8929, and 8931 in Table 11 and test numbers 8917, 8922, 8919, and 8923 in Table 12 of the NPRM.

[86] NHTSA–2020–0093–0006.

Clarifying Belt Webbing Specifications

Some CRS manufacturers took the opportunity to comment on the webbing used for the standard seat assembly's seat belts. Currently, S6.1.1.(c) specifies that the webbing must comply with FMVSS No. 209 and have a width of not more than 2 inches.[87] Graco notes that the current Compliance Test Procedure, TP–213–10, specifies webbing with 5 panels but that the 5-panel webbing is not specified in FMVSS No. 213, as Graco believes it should be. The commenter also notes the Research Test Procedure that was used to develop the 2020 NPRM used webbing with 7 panels. JPMA and Britax note that, as 5-panel webbing is no longer available, FMVSS No. 213 should reflect the mechanical properties of the webbing. Graco believes that FMVSS No. 209 permits significant variation in elongation, which can affect FMVSS No. 213 test outcomes. Graco recommends that FMVSS No. 213 should provide a narrow range for the elongation under load to ensure test consistency.

Agency Response

FMVSS No. 213 does not specify the number of panels for the standard seat assembly's seat belt webbing, and we do not believe it is necessary to do so. NHTSA used 7-panel webbing that was certified to applicable requirements in FMVSS No. 209 throughout the development of the proposed updates to FMVSS No. 213, as it is now more commonly used in the field. It is true that the current OVSC Compliance Test Procedure for FMVSS No. 213, TP–213–10, specifies 5-panel webbing and that the Research Test Procedure specifies a 7-panel webbing. However, neither contradicts the standard because both types of webbing were certified to applicable requirements of FMVSS No. 209. Furthermore, as we learned from reaching out to a seat belt supplier/manufacturer and from tests we conducted (described below), the number of panels does not affect the strength or elongation of the webbing. The number of panels is simply a matter of manufacturer preference.

NHTSA conducted some elongation tests on seat belt webbing having different number of panels and different specifications for percent elongation.

TABLE 1—ELONGATION TESTING OF 7 SEAT BELT WEBBING MODELS

| Webbing | Elongation % | Break load (N) | Maximum displacement (mm) |
|---|---|---|---|
| Autoliv 6% 3-Panel | 6.3 | 27,842.6 | 184.7 |
| Autoliv 6% 3-Panel | 6.4 | 27,753.5 | 180.4 |
| Autoliv 6% 3-Panel | 6.3 | 27,746.6 | 187.8 |
| Autoliv 10% 5-Panel | 9.7 | 28,762.0 | 238.0 |
| Autoliv 10% 5-Panel | 9.6 | 28,828.0 | 237.5 |
| Autoliv 10% 5-Panel | 9.5 | 29,103.8 | 246.2 |
| Autoliv 15% 6-Panel | 12.4 | STROKE MAXED OUT | 260.0 |
| Autoliv 15% 6-Panel | 12.5 | STROKE MAXED OUT | 260.0 |
| Autoliv 15% 6-Panel | 12.8 | STROKE MAXED OUT | 260.0 |
| MGA 5-Panel | 8.4 | 26,827.4 | 201.3 |
| MGA 5-Panel | 8.5 | 27,587.1 | 212.5 |
| MGA 5-Panel | 6.7 | 26,600.2 | 200.5 |
| CALSPAN Compliance 5-Panel | 6.8 | 32,511.1 | 207.0 |
| CALSPAN Compliance 5-Panel | 6.5 | 33,045.7 | 200.9 |
| CALSPAN Compliance 5-Panel | 6.5 | 33,630.9 | 208.9 |
| CALSPAN R&R 7-Panel | 8.2 | 32,187.7 | 224.0 |
| CALSPAN R&R 7-Panel | 8.0 | 32,410.2 | 223.1 |
| CALSPAN R&R 7-Panel | 8.2 | 32,372.3 | 220.3 |
| VRTC R&R 7-Panel | 7.2 | 29,244.8 | 216.0 |
| VRTC R&R 7-Panel | 7.3 | 28,615.1 | 217.6 |
| VRTC R&R 7-Panel | 7.4 | 29,322.2 | 222.5 |

Test data in Table 1 show that webbing can be manufactured to different percent elongation specifications independent of the number of panels, and therefore, specifying the number of panels would be meaningless. Because the number of panels is immaterial, NHTSA may change TP–213 to remove any specification of a panel number. This addresses the comments by JPMA, Graco and Britax regarding the discrepancy of the number of panels in the webbing and the difficulty purchasing the 5-panel webbing. What matters most about the webbing in this context is the elongation characteristics, not the number of panels.

Graco states that the proposed regulatory text in the NPRM only requires that the webbing meet FMVSS No. 209 requirements without defining the desired mechanical properties. NHTSA disagrees that the regulatory text does not specify the webbing's mechanical properties, as FMVSS No. 209 S4.2, referenced in FMVSS No. 213, specifies the mechanical properties of the webbing.

Graco recommends narrowing the elongation limits and we agree to consider this for the OVSC Compliance Test Procedure (TP–213). NHTSA recognizes that the elongation limits in FMVSS No. 209 range widely, 20 percent, 30 percent and 40 percent depending on type of seat belt assembly. While Graco suggests FMVSS No. 213 should specify a narrow range for elongation under load, it did not provide data demonstrating how different elongation specifications within FMVSS No. 209 affect FMVSS No. 213 test outcomes. Nonetheless, while FMVSS No. 209 contains wide elongation ranges, the vehicle manufacturers usually use ranges of 6–15 percent. Webbing of lower elongation

[87] FMVSS No. 209, ''Seat belt assemblies,'' establishes elongation requirements (S4.2(c) when the webbing is subjected to a load of 11,120 Newtons (N). The elongation requirements vary depending on the different assembly types. In general, the webbing must not extend to more than the following elongation when subjected to the specified forces in accordance with the procedure specified in FMVSS No. 209 S5.1(c): Type 1 seat belt assembly—20 percent at 11,120 [Newtons (N)]; Type 2 seat belt assembly 30 percent at 11,120 N for webbing in pelvic restraint and 40 percent at 11,120 N for webbing in upper torso restraint.

percentages would be difficult to produce and procure, and could be too stiff causing potential injuries as it is slowing down the occupant more abruptly. Elongation ranges over 15 percent could create excessive excursion during a crash, which could result in an undesirable outcome for the occupant (*i.e.,* it will be more likely for the occupant to contact vehicle structures, like the instrument panel or steering wheel). The agency will consider incorporating in TP–213 a narrower elongation range than is currently specified in the test procedure, to reflect belt webbing in today's vehicles. The agency tentatively concludes that a narrower elongation range would better represent the real-world crash environment, as it would be a range commonly found in vehicles.

Further, NHTSA notes that, in practice, the elongation values used to develop this final rule were much narrower than that specified in FMVSS No. 209. NHTSA did not collect the specific elongation characteristics for the webbing used during FMVSS No. 213 development testing. However, webbing that was recently procured by VRTC for testing the updated standard seat assembly is consistent with what vehicle manufacturers use (6–15 percent). So while the elongation ranges in FMVSS No. 209 are wide, in practice webbing with much smaller elongation ranges are used.

2. Child Restraint Anchorage System

The specifications for the child restraint anchorage system are the same as those proposed in the NPRM. These include the locations for the lower anchorages and for the top tether anchorage. There were no comments opposing the proposed specifications. This final rule adopts the proposal for the reasons provided in the NPRM.

*d. Repeatability and Reproducibility of Test Results*

After NHTSA developed the updated standard seat assembly, the agency contracted with three different test labs to build the updated standard seat assembly and evaluate the repeatability and reproducibility of the FMVSS No. 213 sled test. NHTSA's repeatability and reproducibility evaluation of the updated standard seat assembly is discussed in more detail in the agency's technical report titled, ''FMVSS No. 213 Frontal Repeatability and Reproducibility Evaluation,'' (August 2023). A copy of the report is found in the docket for this final rule. The three test labs were Calspan, the Medical College of Wisconsin (MCW) and the Transportation Research Center (TRC).

Calspan and MCW fabricated an updated standard seat assembly based on a drawing package provided by NHTSA. VRTC provided TRC with an up-to-date standard seat assembly to use as a baseline in the assessment. After building an updated standard seat assembly, Calspan and MCW provided key measurements of their updated standard seat assemblies for NHTSA to compare to the drawing package. The labs also provided data of foam certifications [88] showing the repeatability and reproducibility of the new foam cushion IFD test procedure described in Appendix C of the 2020 ''Evaluation of Foam Specifications for Use on the Proposed of the FMVSS No. 213 Test Bench''.[89]

Each lab also conducted sled testing to evaluate the repeatability and reproducibility of the overall updated standard seat assembly and the test procedure used in the assessment. Each lab conducted several sets of repeat tests with the same child restraints systems, which provided the data needed to evaluate the overall repeatability and reproducibility of the updated standard seat assembly, test procedure, and overall system-level sled test. When comparing within each lab and across all three labs, most injury responses had a CV under 10 percent,[90] indicating that the updated sled test and related procedures are repeatable and reproducible.

Comment Received

Graco states that it conducted a statistical analysis of data it gathered during testing [91] at two labs with a HIII–6YO dummy in seven different models of belt-positioning seats and one model of a child restraint installed with a Type 2 belt system. Graco states that the test results show that the HIC36 scores have very high variation between and within the two labs, to the degree that they would fall into the ''needs improvement'' category. The CV for the other injury criteria were mostly in the ''excellent'' range and a few chest resultant scores in the ''good'' range.

Graco states it further assessed if the high CV results for HIC36 are a function of lab-to-lab variation by evaluating the HIC36 scores from just the units tested at Calspan. The commenter states that half of the eight CRSs have high variability (CV > 10 percent) and another showed marginally acceptable variability (CV exactly 10 percent). The commenter argues that its findings are supported by some of the findings in Table 4 of a Calspan's R&R Report (sponsored by NHTSA).[92] The table is titled, ''Reproducibility of the Graco Affix 6-year-old with Type 2 belt restraint.'' Graco notes that the chest acceleration results have a mean of 51.5 g at Calspan and a mean of 58.8 g at VRTC, yet the Calspan R&R Report suggests—relying on a CV of 4.2 percent—that this information supports a test process that is rated ''excellent'' for its repeatability and reproducibility across laboratories. The commenter acknowledges that intra-laboratory testing is consistent. ''However, when the data is taken as a whole the mean is 54.6 g [NHTSA notes that the correct value in the report is 55.1g] and the standard deviation is 4.1 g, and the expected failure rate given these data is approximately 10 percent of units tested, which suggests an unacceptable process.''

Graco also referenced Table 5 of a NHTSA R&R report that shows a difference in the mean values for head excursion between the two labs of 23.7 mm, although the CV was determined to be 2.7 percent, indicating excellent repeatability and reproducibility. The commenter states, ''Again, this illustrates that lab-to-lab variation does exist and can materially affect test outcomes.''

Graco states that, as a result of these tests and its review of the NHTSA report, it is concerned that the representative proposed standard seat assembly has not shown good repeatability and reproducibility in its current state and that improvements must be made to ensure more consistent test results. Graco suggests changes to improve the R&R of the test bench and the test method. These changes are discussed in other sections of this preamble.

[88] Data is documented in the ''FMVSS No. 213 Frontal Repeatability and Reproducibility Evaluation'' technical Report.

[89] Louden, A.E., Wetli, A.E. (2020 December). Evaluation of Foam Specifications for Use on the Proposed FMVSS No. 213 Test Bench. Washington, DC: National Highway Traffic Safety Administration.

[90] Coefficient of Variation (CV) is a measure of the dispersion of data points in a data series around the mean value. CV is computed as a percentage of the mean and is computed for a data series as the standard deviation (σ) for the data series divided by the mean (μ) of the data series times 100. $CV = (\sigma/\mu) \times 100$.

[91] Graco performed 348 dynamic tests using different CRS models (18) and types (rear-facing, forward-facing and booster seats) at two labs: Calspan (Buffalo, NY) and Graco (Atlanta, GA). More details on the testing can be found at Graco's comment (Docket No. NHTSA–2020–0093–0035 at *https://www.regulations.gov/*).

[92] Table 4, Maltese, M.R., Horn, W. ''Repeatability and Reproducibility of the Updated FMVSS No. 213 Frontal Standard Seat Assembly''. October 2019. Report Number: 213R&R–CAL–19–018R1. Docket No. NHTSA–2020–0093–0011 at *https://www.regulations.gov/.*

Agency Response

NHTSA disagrees with Graco's view about the R&R of the sled. As discussed above, NHTSA performed repeatability and reproducibility tests at the three laboratories used (Calspan, MCW, and TRC) on a variety of CRS models in different configurations using different size dummies (see Table 2) to help NHTSA determine the R&R of the proposed test equipment and test procedure. This section will discuss this testing in more detail showing that the proposed equipment and test procedure are R&R, as well as responding to some of the commenter's concerns about R&R.

The standard seat assemblies in the three laboratories used for the repeatability and reproducibility testing were in accordance with the specifications of this final rule.[93] The sled acceleration pulses used in the three laboratories were within the specified corridor of this final rule as shown in Figure 2. The three laboratories used acceleration-based sleds (HYGE Sled or SERVO Sled). More details are available in the tables found in Appendix A to the Preamble—Reproducibility Test Results.

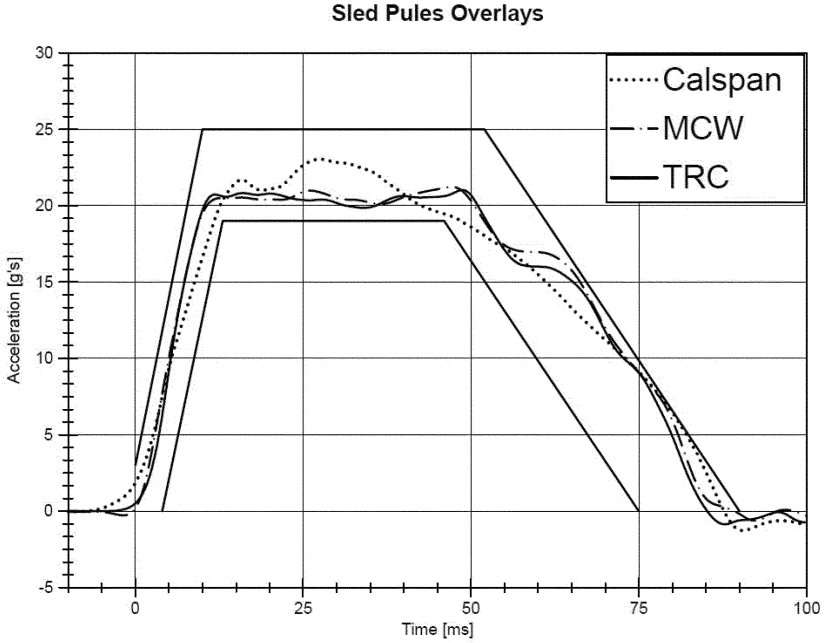



*Figure 2. Pulse comparison in three laboratories and FMVSS No. 213 corridor.*

NHTSA calculated the CV for the applicable FMVSS No. 213 injury criteria for the repeat tests to evaluate in-lab repeatability and for all the tests at the three labs to evaluate reproducibility. Since a new CRS is used for each test, the variability in test results for a CRS model is due to the variability in the construction of the CRS, the CRS design, test equipment, test conditions and test procedure.

The CV for the seat back angle measure in the tests of CRS used rear-facing was less than 10 percent for repeatability and reproducibility. The CV for head and knee excursions in tests of forward-facing CRSs and belt-positioning seats were also less than 10 percent for repeatability and reproducibility. The CV for Chest Acceleration repeatability and reproducibility was less than 10 percent for all the CRS models tested in all three laboratories.

The CV for HIC36 repeatability was less than 10 percent in all but one CRS configurations tested. The HIC36 CV for the Evenflo SureRide (6YO-Forward-facing (FF) CRS) tests conducted at MCW was 10.3 percent. The CV for HIC36 reproducibility in all models was less than 10 percent except for the Harmony Defender 360[94] (CV = 16.6 percent) and the Chicco Key Fit (CV = 12.1 percent).

TABLE 2—CV PERCENT VALUES FOR REPEATABILITY AND REPRODUCIBILITY TESTING

| Test facility | QTY | HIC36 | Chest acceleration | Seat back angle |
|---|---|---|---|---|
| | Evenflo Embrace 35—CRABI—Infant—LA Only | | | |
| | | CV% | | |
| Calspan | n = 3 | 2.3 | 1.3 | 0.9 |
| MCW | n = 3 | 3.3 | 4.4 | 3.8 |
| TRC | n = 3 | 5.6 | 9.4 | 3.4 |

[93] Testing was done with the proposed standard seat assembly; however, only minor changes were done to the drawings of the standard seat assembly that would have no effect on the performance of these tests.

[94] Using the HIII–3-Year-Old in a forward-facing (FF) CRS.

TABLE 2—CV PERCENT VALUES FOR REPEATABILITY AND REPRODUCIBILITY TESTING—Continued

| Test facility | QTY | HIC36 | Chest acceleration | Seat back angle |
|---|---|---|---|---|
| All | n = 9 | 5.6 | 5.7 | 8.7 |
| | Chicco Key Fit—CRABI—Infant—LA Only | | | |
| | | CV% | | |
| Calspan | n = 3 | 5.1 | 0.7 | 2.3 |
| MCW | n=1 | | | |
| TRC | n = 1 | | | |
| All | n = 5 | 12.1 | 1.1 | 6.7 |
| | SigmaL | 13.1 | | |
| | Evenflo Embrace 35—CRABI—Infant—SB3PT | | | |
| | | CV% | | |
| Calspan | n = 3 | 0.9 | 1.3 | 1.7 |
| MCW | n=3 | 3.8 | 2.7 | 2.0 |
| ALL | N = 6 | 7.6 | 5.6 | 3.0 |
| | Cosco Scenera Next—HIII 3YO—RF $^{95}$—LA Only | | | |
| | | CV% | | |
| Calspan | n = 3 | 2.4 | 3.7 | 2.0 |
| MCW | n = 3 | 1.5 | 2.4 | 0.9 |
| TRC | n = 3 | 9.5 | 3.1 | 2.4 |
| All | n = 9 | 6.2 | 3.1 | 1.9 |
| | Graco MyRide 65—HIII 3YO—RF—Type 2 | | | |
| | | CV% | | |
| Calspan | n = 3 | 3.4 | 1.7 | 1.1 |
| MCW | n = 3 | 3.0 | 2.9 | 1.0 |
| TRC | n = 3 | 2.2 | 1.9 | 7.5 |
| All | n = 9 | 8.3 | 2.2 | 7.0 |

| Test Facility | QTY | HIC36 | Chest acceleration | Head excursion | Knee excursion |
|---|---|---|---|---|---|
| | Cosco Scenera Next—HIII 3YO—FF $^{95}$—LATCH | | | | |
| | | CV% | | | |
| Calspan | n = 3 | 3.6 | 3.4 | 0.6 | 1.7 |
| MCW | n = 3 | 8.3 | 1.3 | 1.8 | 0.3 |
| TRC | n = 3 | 2.9 | 2.5 | 0.5 | |
| All | n = 9 | 8.9 | 4.4 | 1.8 | 1.4 |
| | Harmony Defender 360—HIII 3YO—FF—Type 2&T | | | | |
| | | CV% | | | |
| Calspan | n = 1 | | | | |
| MCW | n = 3 | 3.1 | 2.6 | 1.0 | 0.5 |
| TRC | n = 2 | | | | |
| All | n = 6 | 16.6 | 5.9 | 2.0 | 1.6 |
| | SigmaL | 9.8 | | | |
| | Britax Marathon Clicktight—HIII 6YO—FF—LA Only | | | | |
| | | CV% | | | |
| Calspan | n = 3 | 6.5 | 5.1 | 3.3 | 1.2 |
| MCW | n = 1 | | | | |
| TRC | n=1 | | | | |
| All | n = 5 | 6.3 | 6.5 | 0.7 | 2.2 |
| | Evenflo SureRide—HIII 6YO—FF—LATCH | | | | |
| | | CV% | | | |
| Calspan | n = 0 | | | | |

| Test Facility | QTY | HIC36 | Chest acceleration | Head excursion | Knee excursion |
|---|---|---|---|---|---|
| MCW | n = 3 | 10.3 | 3.4 | 3.5 | 0.4 |
| | SigmaL | 15.3 | | | |
| TRC | n = 3 | 4.8 | 0.3 | 1.0 | 0.6 |
| All | n = 6 | 9.1 | 2.9 | 2.7 | 1.3 |
| | Graco Nautilus 65—HIII 6YO—FF—Type 2 | | | | |
| | | CV% | | | |
| Calspan | n = 3 | 3.5 | 1.3 | 1.7 | 0.7 |
| MCW | n = 3 | 4.9 | 5.2 | 0.7 | 0.7 |
| TRC | n = 3 | 2.2 | 1.9 | 1.2 | 1.1 |
| All | n = 9 | 8.8 | 3.5 | 2.0 | 1.1 |
| | Britax Frontier Clicktight—HIII 10YO—FF—Type 2&T | | | | |
| | | CV% | | | |
| Calspan | n = 2 | n/a | | | |
| MCW | n = 1 | n/a | | | |
| TRC | n = 3 | n/a | 5.1 | 1.0 | 0.5 |
| All | n = 6 | n/a | 6.1 | 1.6 | 1.3 |
| | Cosco Pronto HB—HIII 6YO—BPS—Type 2 | | | | |
| | | CV% | | | |
| Calspan | n = 3 | 3.4 | 7.0 | 0.8 | 0.7 |
| MCW | n = 3 | 6.5 | 5.4 | 3.4 | 0.6 |
| TRC | n=3 | 3.6 | 1.0 | 0.4 | 0.7 |
| All | n = 9 | 7.4 | 9.5 | 3.7 | 1.6 |
| | Graco Affix—HIII 6YO BPS—Type 2 | | | | |
| | | CV% | | | |
| Calspan | n = 3 | 4.7 | 2.0 | 1.6 | 0.2 |
| MCW | n = 3 | 5.5 | 5.2 | 2.7 | 3.5 |
| TRC | n=3 | 8.1 | 1.2 | 2.3 | |
| All | n = 9 | 8.9 | 3.5 | 2.6 | 2.4 |
| | Harmony Youth NB—HIII 6YO—BPS—Type 2 | | | | |
| | | CV% | | | |
| Calspan | n = 3 | 3.4 | 1.4 | 1.1 | 1.8 |
| MCW | n = 3 | 4.5 | 1.7 | 1.0 | 0.9 |
| TRC | n = 3 | 9.4 | 2.7 | 2.3 | 0.9 |
| All | n = 9 | 7.9 | 2.9 | 1.9 | 1.1 |
| | Evenflo Big Kid LX HB—HIII 10YO—BPS—Type 2 | | | | |
| | | CV% | | | |
| Calspan | n = 3 | n/a | 1.6 | 1.1 | 4.1 |
| MCW | n = 3 | n/a | 3.5 | 1.8 | 1.2 |
| TRC | n = 3 | n/a | 1.0 | 0.6 | 0.1 |
| All | n=9 | n/a | 3.4 | 3.5 | 3.2 |

[95] RF means rear-facing.
[96] FF means forward-facing.
* HIC36 when using the HIII–10YO dummy is not an injury measure used in FMVSS No. 213.

The Harmony Defender 360 tested in the forward-facing with internal harness CRS configuration, using the HIII–3YO dummy had good repeatability values, but the CV exceeded 10 percent for HIC36 reproducibility. The Chicco Key Fit infant carrier tested in the rear-facing with internal harness CRS configuration, using the CRABI–12MO dummy had good repeatability values, but the CV exceeded 10 percent for HIC36 reproducibility. The CV for HIC36 repeatability for the Evenflo SureRide (forward-facing CRS with internal harness with HIII–6YO) exceeded 10 percent in one laboratory (MCW). We note that the HIC36 values for these CRSs were under 500 which is less than 50 percent of the performance limit (1000). Because CV is calculated by dividing the standard deviation by the average values, the CV appears to be larger for lower average values of HIC36 than for higher average HIC36 values.[97]

[97] This is considered a limitation in the use of %CV. Therefore, NHTSA also considers the average measures with respect to the allowable performance measure when assessing repeatability and reproducibility using %CV.

For each metric with a higher than 10 percent CV, we calculated the substantiveness of the variation relative to the IARV or performance limit. Sigma-to-Limit (SigmaL, σL) (see Equation 1) results above 2.0, would indicate at least two standard deviations between the average response and the IARV or performance limit. Responses with a Sigma-to-Limit greater than two identify ''good'' levels of variation that are unlikely to cross the IARV or performance limit.

Sigma-to-Limit (SigmaL, σL) = ((Limit-$\bar{x}$))/σ Equation 1

The HIC36 CV percent for repeatability for the Evenflo SureRide (6YO-forward-facing CRS) tests conducted at MCW was 10.3 percent with a Sigma-to-limit value of 15.3. The CV for HIC36 reproducibility in the Harmony Defender 360 [98] was 16.6 percent with a sigma-to-limit value of 9.8 and in the Chicco Key Fit was 12.1 with a sigma-to-limit value of 13.1. This means that while these CRSs had a CV percent above 10, it is unlikely that the observed variability would cause a CRS to cross the IARV established in the standard.

Graco commented that half of their eight CRSs having high in-lab variability (CV greater than 10 percent) and the high HIC variability values in tests conducted at different labs. Graco did not provide the HIC values for those tests but we would expect that HIC values for those tests were low (around or below 500) where, just like NHTSA's tests with the Harmony Defender 360 and Evenflo SureRide, CV appears to be larger for lower average values of HIC36 than for higher ones.

These results show the updated standard seat assembly design and corresponding test procedures are repeatable and reproducible. The CV analysis is a practical approach to evaluating R&R of the whole system (test article, test equipment, test environment, and test procedure). While we cannot extract the variability introduced by the different sources of variability (for example variation in acceleration pulses, test dummies, CRS build), results showed acceptable CV values (less than 10 percent) or marginally above 10 percent.

In further response to Graco's concern that its tests had HIC values exceeding 10 percent CV, it is important to note that assessment of repeatability based on CV values is a methodology established to assess the repeatability and reproducibility of anthropomorphic test devices in qualification testing.[99] Per this assessment, CV values of dummy responses in the qualification tests of less than or equal to 10 percent are considered acceptable to excellent in repeatability and reproducibility. Note, however, that these qualification tests typically involve an impact by a tool to a specific dummy part (*e.g.,* head, thorax, pelvis, right arm, left leg), and so the CV values only evaluate the variability of a specific dummy response. In contrast, the CV values of dummy responses in the frontal impact sled test includes variability at a system level (whole body dummy responses in different child restraint systems on a dynamic sled). Therefore, strict adherence to the acceptable limit of CV used in the dummy qualification tests may be setting the bar exceptionally high when evaluating system level performance. Nevertheless, the reproducibility evaluation shows it is acceptable in 13 of the 15 CRS configurations evaluated, as shown in Table 2.

Graco notes that the testing published during the NPRM showed ''excellent'' repeatability and reproducibility for head excursions (CV = 2.7 percent) yet there was a difference in the data of 23.7 mm. As discussed above, the CV ''ratings'' were established to evaluate dummy responses in qualification tests, so we do not have a defined scale of what CV ratings would apply for a more complex system like the frontal sled test. However, a 23.7 mm difference is less than 3 percent of the head excursion performance limit. A 3 percent difference in performance does not amount to an unreasonable degree of variability in a complex system with multiple variability sources. Graco noted that the chest acceleration data reported in the NPRM showed a CV of 4.2 for reproducibility tests with the Graco Affix. NHTSA considers a chest acceleration CV of 4.2 percent as low and representing good repeatability and reproducibility of the dummy measure. NHTSA assures the safety of motor vehicles and motor vehicle equipment under the self-certification framework of the Safety Act through its assessment of the manufacturers' basis for certification. Manufacturers self-certify their products knowing that NHTSA can perform its own testing following the manufacturers' certification. Accordingly, they strive to produce vehicles and equipment that will meet the FMVSS performance requirements when tested by NHTSA. We cannot comment on Graco's test results as we do not have enough information on the tests to make any determination on the sources of the increased CV values. The data available to NHTSA, however, show variability as controlled to a small and reasonable level.

In addition to the above tests, NHTSA tested 3 additional CRS models and installation configurations 3 times to further evaluate the in-lab repeatability. All these tests had injury measures with CV values under 10. More detailed tables are available in Appendix A and Appendix B to the preamble.[100]

TABLE 3—CV PERCENT VALUES FOR REPEATABILITY TESTING

| | QTY | HIC36 | Chest acceleration | RF angle |
|---|---|---|---|---|
| | | CV | | |
| **Cosco Scenera Next—Rear-Facing—12-Month-Old—Lower Anchor Only Installation** | | | | |
| Calspan | 3 | 5.0 | 6.6 | 3.3 |

[98] Using the HIII–3-Year-Old in a forward-facing (FF) CRS.

[99] Rhule, D., Rhule, H., & Donnelly, B. (2005). The process of evaluation and documentation of crash test dummies for Part 572 of the Code of Federal Regulations. 19th International Technical Conference on the Enhanced Safety of Vehicles, Washington, DC, June 6–9, 2005. *https://www-esv.nhtsa.dot.gov/Proceedings/19/05-0284-W.pdf.*

[100] Reports on this testing will be docketed with the final rule. (1) Horn, W. and Maltese, M.R. ''Phase 2 Summary Report FMVSS No. 213 Proposed Updated Frontal Standard Seat Assembly'' Calspan. September 2020, (2) Hauschild, H.W. and Stemper, B. ''Final Summary Report for FMVSS 213 R&R Testing Updated Frontal Standard Seat Assembly'' MCW. December 2020, (3) Hauschild, H.W. and Stemper, B. ''Final Summary Report of FMVSS 213 R&R Testing Updated Frontal Standard Seat Assembly'' MCW. November 2021.

| | QTY | HIC36 | Chest acceleration | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|
| | | CV | | | |
| **Maxi Cosi Pria[101] HIII–10YO Forward-Facing CRS**—Type 2 Belt Installation | | | | | |
| Calspan | 3 | n/a | 3.9 | 0.8 | 1.2 |
| **Harmony Youth HIII–10YO—Belt-Positioning Seat—Type 2 Belt Installation** | | | | | |
| TRC | 3 | n/a | 0.9 | 1.9 | 1 |

In conclusion, NHTSA's data shows that good R&R can be achieved by the proposed test equipment and test procedures. While CV analysis cannot identify the different sources of variability, the system as a whole, including variability sources that are independent of the system we are evaluating (*e.g.,* CRS design, pulse variation, etc.), showed good R&R and NHTSA is proceeding to adopt the proposed standard seat assembly with minor changes based on comments. These changes are discussed in another section of this preamble.

*e. Miscellaneous Issues*

1. Addition of an ATD Head Protection Device (ATDHPD)

The drawing package of the updated standard seat assembly adopted by this final rule depicts use of an ATDHPD, at NHTSA's option, as a housekeeping measure to prevent damage to NHTSA's dummies in some tests. The ATDHPD, which NHTSA developed, is a metal part that is padded on one side that mounts on the seat back structure of the standard seat assembly. It is positioned behind the head area of a dummy seated in a CRS on the standard seat assembly.[102] Testing with the proposed standard seat assembly showed the back of the head of the HIII–6YO and HIII–10YO dummies directly hitting the metal frame on the top of the seat back when the dummy is rebounding from the frontal loading. With repeated testing, this impact will likely damage the head of the dummies. Use of the ATDHPD, which is easily installed and removed, prevents this damage as the padding softens the impact of the dummy's head during rebound.

The addition of the ATDHPD does not affect the performance of the CRS while in frontal loading and may prevent or minimize unnecessary damage to a dummy's head. Testing of two belt-positioning seats with and without the ATDHPD showed that results were comparable and achieved acceptable repeatability (see Table 4 and Table 5).

While one of the belt-positioning seats tested was a high back model, NHTSA is only specifying the optional use of the ATDHPD when using backless belt-positioning seats. This is because the head impacts were occurring with backless belt-positioning seats, as there was no back on the CRS to prevent the rebound head motion. Also, while test data show there was no difference in testing with and without the ATDHPD, NHTSA would like more data to verify that all high back belt-positioning seats would be unaffected by the ATDHPD. Therefore, NHTSA is only specifying the optional use of the ATDHPD for backless belt-positioning seats due to the high potential for damage to the dummies when testing these types of child restraint systems.

TABLE 4—TEST RESULTS OF COSCO PRONTO WITH AND WITHOUT ATDHPD

| Test No. | HIC36 | Chest acceleration (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|
| **Cosco Pronto—HIII–6YO—Belt-Positioning Seat** | | | | |
| RR05–19–13 | 650 | 58.7 | 528 | 613 |
| RR05–19–14 | 621 | 51.9 | 525 | 605 |
| RR05–19–15 | 663 | 52.5 | 533 | 613 |
| Calspan Without ATDHPD: | | | | |
| St. Dev | 21.6 | 3.8 | 4.3 | 4.3 |
| Average | 645.1 | 54.4 | 528.7 | 610.1 |
| CV | 3.4 | 7.0 | 0.8 | 0.7 |
| RR06–20–32 * | 582 | 50.2 | 537 | 610 |
| RR06–20–33 * | 575 | 53.7 | 539 | 612 |
| RR06–20–34 * | 511 | 51.5 | 538 | 607 |
| Calspan * ATDHPD: | | | | |
| St. Dev | 39.5 | 1.8 | 1.3 | 2.3 |
| Average | 556.1 | 51.8 | 538.1 | 609.6 |
| CV | 7.1 | 3.5 | 0.2 | 0.4 |
| All: | | | | |
| St. Dev | 56.4 | 3.0 | 5.9 | 3.1 |
| Average | 600.6 | 53.1 | 533.4 | 609.8 |
| CV | 9.4 | 5.7 | 1.1 | 0.5 |

[101] Maxi Cosi 85. We note that on August 24, 2021 Dorel issued a recall on the Maxi Cosi 85 CRS due to increased risk of injury in the event of a crash if the seat is installed with only the lap belt. The Maxi Cosi Pria 85 units tested in this R&R study were included in the scope of this recall; however, the test performed in the R&R study utilized a lap and shoulder belt installation which differed than the installation method identified in the recall. See *https://static.nhtsa.gov/odi/rcl/2021/RCLRPT-21C003-8612.PDF.*

[102] The ATDHPD resembles a head restraint, but it was not designed to be representative of one.

TABLE 5—TEST RESULTS OF CHICCO GOFIT WITH AND WITHOUT ATDHPD

| Test No. | HIC36 | Chest acceleration (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|
| **Chicco GoFit NB—HIII–10YO—Belt-Positioning Seat** | | | | |
| RR06–19–40 | n/a | 47.5 | 502 | 676 |
| RR06–20–26 | n/a | 45.5 | 496 | 662 |
| Calspan Without ATDHPD: | | | | |
| St. Dev | n/a | n/a | n/a | n/a |
| Average | n/a | n/a | n/a | n/a |
| CV | n/a | n/a | n/a | n/a |
| RR02–20–24 * | n/a | 47.2 | 514 | 685 |
| RR02–20–25 * | n/a | 44.9 | 498 | 671 |
| RR06–20–40 * | n/a | 48.2 | 485 | 682 |
| Calspan * ATDHPD: | | | | |
| St. Dev | n/a | 1.7 | 14.2 | 7.0 |
| Average | n/a | 46.8 | 498.9 | 679.4 |
| CV | n/a | 3.6 | 2.8 | 1.0 |
| All: | | | | |
| St. Dev | n/a | 1.4 | 10.2 | 8.9 |
| Average | n/a | 46.7 | 498.9 | 675.3 |
| CV | n/a | 3.0 | 2.0 | 1.3 |

2. Truncating Head Acceleration Time Histories

In the NPRM, NHTSA requested comment on whether, in a compliance test, NHTSA should compute HIC36 for backless belt positioning seats tested with the HIII–6YO dummy using an acceleration pulse that is truncated to 175 msec.[103] The seat back of the proposed standard seat assembly was raised from an earlier version to reduce dummy head contact with the rear seat structure of the proposed standard seat assembly. While raising the seat back reduced the number of head contacts with the rear seat structure, NHTSA observed that head contact still occurs when testing backless belt-positioning seats with the HIII–6YO dummy. In conducting research tests to inform the revisions to these tests, the agency made the HIC36 calculation using a head acceleration pulse truncated between 175–200 msec, which corresponded to a time in the rebound phase before the head impact with the seat support structure.

Comments Received and Agency Response

Consumer Reports supported truncating the data set at 175 msec. No commenter opposed this truncation. NHTSA will incorporate a 175 msec data truncation to exclude rebound high head accelerations from HIC36 calculations. The accommodation will only be made for backless booster seats tested with the HIII–6YO dummy and not for all CRSs because this configuration sometimes results in head acceleration spikes when the dummy is rebounding into the updated standard seat assembly after the simulated crash. Because the HIII–6YO seated in a backless booster seat typically has a height higher than the seat back of the updated standard seat assembly, the dummy's head hits the updated standard seat assembly's metal frame causing the head acceleration spike.[104] NHTSA does not see the need to apply this truncation to other dummies and/or other CRS types as a smaller dummy's head does not reach past the top of the seat back [105] and other types of CRSs typically have a seat back of their own with structure and padding protecting the head of the dummy, both of which prevent high HIC spikes against the seat back. Moreover, NHTSA believes it is not in the interest of safety to truncate HIC values in tests other than of backless booster seats tested with the HIII–6YO dummy. If HIC values exceeded the standard's limit were measured for any other type of CRS, or for backless boosters using any other type of dummy, NHTSA would investigate those test results as a noncompliance because they are indicative of a potential safety concern.

3. Drawing Changes

Graco identified potential errors in some of the drawings of the proposed standard seat assembly [106] or places where ambiguity exists and suggested corrections or improvement. The commenter also suggested improvements to the drawings to address variability. NHTSA discusses these comments below.

Dimension Discrepancy

Graco notes there are multiple dimension call outs for the shoulder belt anchor hole and requests NHTSA clarify which dimension takes priority. The location is identified in the drawing package four times, and three different vertical dimensions provided:

- 953 ±3 mm (3021–010, Sheet 1), using part 3021–209 as the reference plane
- 953 ±3 mm (3021–015, Sheet 1), using part 3021–209 as the reference plane
- 941 ±3 mm (3021–015, Sheet 2), using part 3021–200–9 as the reference plane
- 877 ±6 mm (3021–1000, Sheet 1), using part 3021–200–9 as the reference plane

In response, NHTSA believes that no changes to these drawings are necessary. Drawings 3021–010&3021–0015–Sht1 reference the bottom of the buck and include attachment plate (12.5mm/0.50″) foot; 3021–0015–Sht2 is referenced to the bottom of the 4-inch tube; and 3021–1000 is referenced to the bottom of the 2-inch tube. Due to the different reference points these dimensions need to be different.

Dimension Conflict

Graco notes that drawing 3021–209 has a conflict between the plate thickness in the material note (thickness given as 12.5 mm) versus the dimension on the face of the drawing (12.7 mm). It believes the intent is to use standard

[103] 85 FR at 69424, col. 1.

[104] These high HIC accelerations are also present when using the optional ATD Head Protection Device, therefore, HIC truncation is still relevant for the HIII–6YO in backless booster seats.

[105] The HIII–10YO dummy does not measure HIC, therefore, the truncation is not an issue.

[106] May 2019 Child Frontal Impact Sled Drawing Package (NHTSA–213–2016).

gauge plate as suggested by the 0.5 inch for thickness referred to in the materials note, which would make the correct value 12.7 mm. It requests that NHTSA reconcile the two dimensions.

In response, NHTSA has reconciled the dimension to 0.5 inch so that drawings are consistent.

Missing Dimension

Graco comments on a dimension that may be missing for a seat back support tube. On drawing 3021–015, Sheet 2, Revision D, section B–B, a vertical dimension is called out for the second support tube, however, Graco notes that there is a dimension missing for the third support tube. Graco suggests that a dimension be given for this third tube to ensure a consistent standard seat assembly.

In response, NHTSA has added dimensions for the seat tube as suggested.

Notes

Graco requests notes clarifying the manufacturing intent when it comes to several hole features. For reference, Graco states it appreciates Note 1 of drawing 3021–265, Revision D, that calls for mounting holes to be drilled after standard seat assembly. The note communicates to standard seat assembly manufacturers that if the holes were drilled into the individual parts before assembly, the resulting tolerance stack up might place the holes in locations that preclude the standard seat assembly from being used as intended. Graco requests notes on the following:

- 3021–255, Sheet 1: Seat Frame Gusset Plate
- 3021–326, Sheet 1: D-Ring Anchor
- 3021–756, Sheet 1: Latch Belt Anchor Plate

Alternatively, Graco requests NHTSA omit the note from 3021–265. Graco explains that because of the presence of Note 1 on 3021–265, and its omission on the drawings for the three parts listed, there may be some ambiguity as to whether these holes should be drilled and/or tapped before or after assembly.

NHTSA is not making the suggested change. Each of the anchor assemblies and pieces already have tolerances in each of the drawings. It is up to the fabricator to determine whether to drill the hole prior to welding or after. The final assembly drawing 3021–1000 is to be used to verify the anchors are within specifications.

Tolerances of Z-Point

Drawing 3021–015, Sheet 1, Revision D, lists the horizontal and vertical dimensions for the Z-point as 120 mm and 80 mm, respectively, referencing the lowest, rearmost seat tubes. The tolerance per Note 1 on 3021–015 is ±3 mm. The Z-point dimensions are called out on drawing 3021–1000, Sheet 1, Revision A. However, the tolerance for this Z-point is specified in Note 1 as ±6 mm. Graco states that if seat assembly manufacturers choose to use drawing 3021–1000 as their reference, there is a possibility that two standard seat assemblies made by different manufacturers could have Z-points off by as much as 12 mm vertically or horizontally. Graco believes that this maximum error difference of 12 mm versus 6 mm can have significant consequences in lab-to-lab correlation scenarios. Graco requests that a single tolerance value be harmonized across all drawings that are used to locate the Z-point.

In response, NHTSA has revised Drawing 3021–1000 to note ±3 mm for the Z-point dimension.

Materials Specifications

Graco requests the most recently published material standards from AISI, ASTM, SAE, to be specified on each drawing. It notes that none of the materials are specified beyond ''steel'' or ''steel, mild'' other than the bold text in drawing 3021–332.

In response, NHTSA has changed the drawings so that steel is called out by ASTM number. Drawing 3031–332 in the NPRM drawing package has been removed but NTHSA added specific requirements on the detailed assembly drawings with the correct type of steel, aluminum, etc.

Foam Cushion Drawings Density Specifications References

Graco comments that drawings 3021–233 Seat Pan Cushion and 3021–248 Seat Back Cushion refer to ''NHTSA Specifications on Preliminary Bench'' in the Procurement Specifications and Test Certification Specifications blocks (four references total). The commenters request that these specifications be updated to indicate that they apply to the representative test standard seat assembly specified in the NPRM.

In response, the agency has removed ''preliminary'' from the drawing package for this final rule.

Type 2 Cantilevered Anchorage Beam

Graco identified a structural issue with the Rear Shelf Mount, drawing 3021–850, that affects durability of the proposed standard seat assembly and potentially the repeatability and reproducibility of test results over time. Graco explains that the Rear Shelf Mount spans the width of the proposed standard seat assembly structure and serves to tie the Rear Locking Belt Mounting Bar Assembly (3021–333) to the structure, as shown in the detail from the standard seat assembly schematic drawing in the figure below.

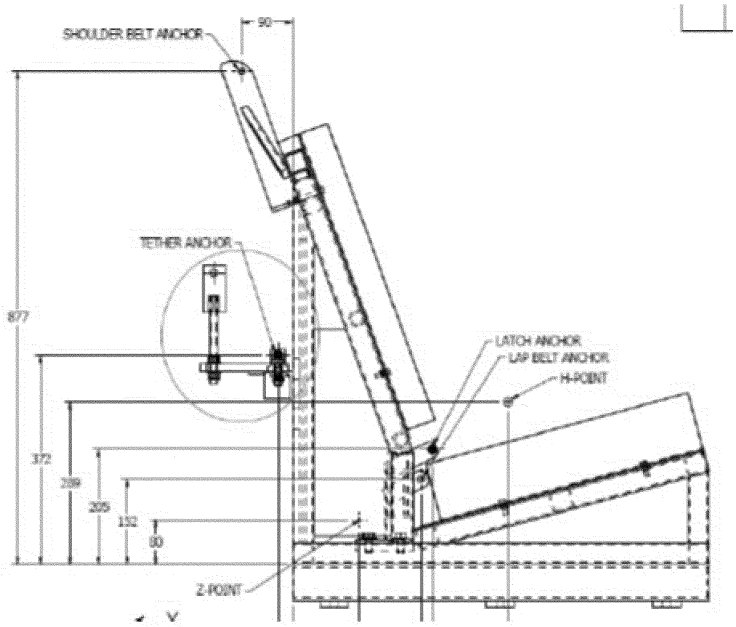



***Figure 3. Detail from Drawing 3021-1000 Bench Seat Schematic Showing Tether Anchor Mounting (Circled) (Figure provided by Graco).***

Graco notes that this item is made from 3⁄16-inch-thick extruded steel angles with the material specified as ''mild steel.'' It states that it observed upward flexing of this part when testing with all the child dummies, and it is most pronounced when testing with the HIII–6YO and the HIII–10YO dummies. The commenter provides an illustration of this in a still image in its comment showing the Rear Locking Belt Mounting Bar Assembly (marked before the test with yellow tape as seen in the image) bending approximately 15 degrees from its normal horizontal orientation during the dynamic test. Graco notes that the moment arm created by the belt anchor location acting upon the Rear Shelf Mount is causing the Rear Shelf Mount to deform where the two parts are joined.

Graco found that the Rear Shelf Mount was permanently deformed to 5.7 degrees from the horizontal. It expresses concern that this part of the structure is too thin and will eventually crack or tear. The commenter suggests making the steel angle thicker (1⁄4''—3⁄8''), using a higher strength grade of steel, providing additional local reinforcement, and/or providing additional components in order to rigidize the connection point for the Rear Locking Belt Mounting Bar Assembly.

To assess the potential impact of the deformation on injury criteria, Graco states it secured the Rear Locking Belt Anchor to the main structure of the proposed standard seat assembly with a ratchet strap to prevent some movement. The commenter assessed the relative difference in motion of the Rear Locking Belt Mounting Bar Assembly during a dynamic test with and without the ratchet strap. Graco states it saw similar excursion values, similar or slightly increased chest resultant values, and an overall decrease in HIC36 values. The commenter expresses concern that this deformation is likely to ''creep'' over time, requiring maintenance cycles. It suggests some child restraint systems may be more sensitive to the effects of bending of the Rear Shelf Mount during testing.

In response, NHTSA has revised the drawings to update the anchor beam to have a 3⁄8-inch thickness instead of a 3⁄16-inch thickness. NHTSA's experience with testing with an anchor beam with a 3⁄8-inch thickness found no deformation. Strengthening the anchor beam addresses Graco's comment.

Shoulder Belt D-Ring and Inboard Type 1 (Lap Belt) Anchor

Graco states that the shoulder belt D-ring (drawing 3021–123) and the inboard Type 1 (lap belt) anchor (drawing 3021–120) are deforming during testing. Graco explains that this deformation was observed after only two or three tests with the HIII–6YO dummy. The commenter is concerned that over time, one of these anchor points could fail during a test. The commenter believes this deformation also calls into question ''the repeatability and reproducibility of tests using undeformed and deformed anchors.'' Graco recommends making the D-ring and inboard anchor out of a harder type of steel and/or increase their dimensions in the direction of loading to prevent them from bending under dynamic forces.

In response, NHTSA will not change the materials of the D-Ring and inboard anchor. These are parts that are meant to be replaced and NHTSA will provide a pass/fail gauge in the test procedure that can be used to evaluate when it is necessary to change them. Drawings for the pass/fail gauges will be available in the drawing package. The Compliance Test Procedure will include procedures to check the sled with the gauges.

Sharp Edge in the Tether Strap Routing Path

Graco provided an image showing how the child restraint tether passes over the top cross bar structure of the proposed standard seat assembly. It notes that the sharp edge is caused by the Bench Seat Back Plate (part number 3021–265) where the tether webbing makes contact, potentially resulting in the webbing tearing. The commenter believes that this risk may be greater if the proposed standard seat assembly design is used for side impact testing. Graco recommends that the upper edge

of the Bench Seat Back Plate be rounded off with a radius of at least half the thickness of the plate stock or lowered slightly from the top plane of the proposed standard seat assembly such that it does not contact the webbing during testing, as it does not represent real vehicle seating compartments.

In response, NHTSA agrees with the suggestion and has updated the drawings (for the frontal and side standard seat assemblies) to round the sharp edge on the seat back plate to prevent tether tearing.[107]

*f. Why NHTSA Has Not Adopted a Floor (Reiteration)*

In the NPRM, NHTSA denied a petition for rulemaking from Volvo to add a floor to FMVSS No. 213's sled fixture used in the compliance test.[108] Several commenters to the NPRM asked the agency to reconsider the petition denial. NHTSA does not have a mechanism recognizing requests to reconsider petition denials other than considering them as regular correspondence to the agency. The agency is under no legal obligation to respond to the NPRM comments requesting NHTSA to reconsider the petition. However, since many were interested in adding a floor to FMVSS No. 213's standard seat assembly, the agency responds to the comments in the discussion below.

JPMA, Evenflo, and Consumer Reports believe that a standardized floor for the test sled would help ensure testing consistency of support legs in all test labs. Additionally, SRN, Evenflo, and Volvo believe a standardized floor would benefit testing of support legs. Evenflo suggests that NHTSA create a separate compliance standard for testing CRSs that feature a support leg. Volvo states that a standardized floor is part of many European testing provisions for CRSs and believes a floor is needed as part of the standard seat assembly to enable the use of a support leg. Volvo believes that by including a floor in the standard seat assembly ''and thereby enabling the use of a support leg, the CRS can be made more comfortable, attractive and safer for children.''

Agency Response

As noted above, NHTSA will not be including a standardized floor as part of the test sled in this final rule. In this section, we acknowledge the comments expressing interest in a floor and highlight the following points reiterating our views in denying the petition for rulemaking.

NHTSA wishes to emphasize at the outset that the Federal motor vehicle safety standards set minimum safety standards. In other words, FMVSS No. 213 sets a minimum threshold that all CRSs must pass to meet the need for safety and does not set an upper limit for performance. FMVSS No. 213 does not prohibit manufacturers from designing CRSs to have support legs as long as the child restraint system can be certified as meeting the standard without use of the support leg. Manufacturers currently offer CRSs for sale in the U.S. with support legs. The CRSs are more expensive than child restraints without legs, but they are available. These CRSs are required by FMVSS No. 213 to provide at least the minimum level of safety required by FMVSS No. 213 when the leg is not used. If a CRS cannot meet the requirements of the standard without the support leg, FMVSS No. 213 prevents its sale in the U.S.

This is because FMVSS No. 213 standardizes the means of attaching the CRS to the vehicle to increase the likelihood of correct installation of the child restraint. Under the standard's approach, a caregiver does not need to learn novel ways of installing a child restraint each time a new CRS is used, or each time a CRS is used in a different vehicle, to ensure their child is protected by the restraint. Standardization also ensures that the high level of protection provided by FMVSS No. 213 will be provided by each CRS installed in every vehicle simply by use of the seat belt or child restraint anchorage system lower attachments, with or without a tether. NHTSA does not know if caregivers will correctly use a support leg. Misuse and nonattachment of tethers is a problem now. Requiring an additional mechanism, the caregiver must properly manipulate for the CRS to be properly installed only risks increasing the rates of misuse. If a CRS is unable to provide at least the minimum level of safety required by the standard without the support leg, then it would be detrimental to safety to allow a leg if the leg may not be used.

If the commenters' support for a floor is based on the premise that NHTSA would also permit the leg to be used as a means to comply with FMVSS, our answer is we would not permit such use, based on the state of current knowledge. Given possible misuse of support legs, NHTSA is not convinced it would be appropriate to permit support legs to be used to meet FMVSS No. 213. Data indicate that misuse of CRSs is high, *e.g.,* tethers are not widely used despite how beneficial they are to safety. We also do not know enough about unintended consequences to the child occupant or other occupants seated nearby resulting from non-use of a leg on the CRS.

NHTSA is concerned that providing a support leg could significantly increase the average price of CRSs. NHTSA must balance any benefits accruing from use of a support leg with the cost of the CRSs, as well as the effect on the ease-of-use of the restraint. CRSs currently on the market that include a support leg are generally more expensive than CRSs without support legs. Requiring a support leg could make an already expensive safety device more expensive and price some caregivers out of the new CRS market.

We also strongly oppose, on principle, having FMVSS No. 213 apply to some child restraints and another FMVSS with enhanced requirements apply to other child restraints (that are likely at higher price points). Such a system could be creating a ''have'' and ''have not'' ranking system that would essentially deem some child restraints safer than others and some children more protected than others. Such an approach would be confusing and unhelpful to consumers and, on its face, unfair. The agency has devised minimum safety requirements that are applied to all child restraints, so caregivers can be assured all child restraints provide *at least* the same minimum level of protection that NHTSA has deemed requisite to meet the need for motor vehicle safety.

For the reasons described above, the agency is not devoting its limited research and rulemaking resources on developing a floor for the standard seat assembly.

**VII. Retaining the Type 1 (Lap Belt) Installation Requirement**

*a. CRSs for Use in Older Vehicles*

As noted above, there was widespread support for the proposal that CRSs must be capable of being anchored to the standard seat assembly by way of Type 2 belts and meet FMVSS No. 213 when attached with the belts. However, SBS and SRN strongly oppose removing the requirement to comply when tested with the Type 1 belt. These commenters believe it is premature to remove the Type 1 belts test in FMVSS No. 213 as there are still many vehicles in the vehicle fleet with Type 1 belts. The commenters add that it is usually families with limited incomes that use older vehicles to transport children. SBS states that ''41 percent of U.S. children

[107] NHTSA revised the side impact drawings prior to the June 30, 2022 final rule to include these changes in FMVSS No. 213a.

[108] 85 FR at 69402.

live in low-income families. These children are more likely to be transported in older vehicles and are known to be at greater risk of injury in traffic collisions.'' SBS and SRN urge NHTSA to retain the Type 1 belt test, at least for a while longer, to meet the needs of persons who may own vehicles that do not have Type 2 belts in rear seats.

SBS and SRN believe that there are differences in performance using a Type 1 versus a Type 2 belt, and that testing with a Type 1 belt results in more safety benefits than testing with a Type 2, *i.e.,* a Type 1 test presents more demanding conditions on the CRS than a test with a Type 2 belt. SRN argues that the data NHTSA presented to demonstrate that Type 2 provides the same, if not increased, safety was insufficient. The commenters believe that a Type 2 belt may mitigate the effects from lack of tether use by providing additional restraint to the upper part of the child restraint, but that the tether anchor point is not present in vehicle installations using only a Type 1 belt. SRN argues that this creates a testing scenario that is not representative of real-world installations of many children who ride untethered in child seats secured with Type 1 belts in older model vehicles.

SBS and SRN are also concerned that CRS manufacturers might strongly warn consumers against Type 1 installation with their products because FMVSS No. 213 will no longer specify testing of them with Type 1 seat belts. The commenters state that this would not only reduce the availability of CRS to persons needing CRSs designed for attachment by Type 1 seat belts, but also compel families with vehicles made before MY 1989 to place CRSs in the front seat where there is a Type 2 belt.

SRN also believes that most CRSs will not be tested with the child restraint anchorage system because with the appropriate test dummy, they weigh 65 lb or more. (FMVSS No. 213 specifies that child restraints must instruct owners not to use the lower anchors of the child restraint anchorage system when the combined weight of the CRS and the child is over 65 lb, to avoid overloading the lower anchors.) Accordingly, a seat belt will be the primary means of attaching these child restraints. SRN believes that child restraints should be assessed in FMVSS No. 213 with a Type 1 seat belt as Type 1 seat belts will be used to attach a child restraint in older model vehicles.

SRN also expresses concern about limitations that would be placed on conventional CRSs used on school buses, where Type 1 belts are more common than Type 2 belts, even in many newer buses. NHTSA notes that IMMI and the Salem-Keizer Public Schools also comment on this issue, but their views were supportive of the switch to certification using the Type 2 belt.[109] IMMI notes that some current pre-K transportation programs, including Head Start programs, still choose to use passenger vehicle CRSs in their school buses. IMMI states that in the case of children under the age of two, passenger vehicle rear-facing infant seats must be used as there are no school bus-specific CRS alternatives and that many current school buses used for pre-K transportation will only have Type 1 belts for the attachment of these CRSs rather than Type 2 belts. However, IMMI does not believe that this consideration should prevent adoption of the proposal. Salem-Keizer Public Schools states that in Oregon, it is prohibited from purchasing a school bus with Type 1 belts, only a bus equipped with a Type 2 seat belt assembly is allowed. The commenter also states that it is beginning to transition to a full fleet of school buses equipped with Type 2 belts. In support of removing the Type 1 belt testing, Salem-Keizer Public Schools states: ''While [transitioning to a full Type 2 fleet] will take time, updating the crash test standards will ensure that CRSs used in school buses have been tested using systems available to use in both school buses and [multipurpose passenger vehicles].''

Agency Response

NHTSA appreciates the comments on this issue. After reviewing the comments, we agree with SBS and SRN to retain the requirement to certify certain CRS when installed solely with a Type 1 belt, for a limited time for the reasons provided below. We will retain the requirement until September 1, 2029, to allow time for the on-road vehicle fleet to change over to where an estimated 90 percent of passenger vehicles will have Type 2 belts in rear seating positions. Our basis for the date estimate is explained later in this section.

NHTSA agrees with SRN and SBS's concerns regarding the availability of CRSs that can be installed with Type 1 belts to persons with older vehicles. We estimate that about 36 percent of the 2022 light duty vehicle fleet are of model years (MY) 2000–2007 that do not have Type 2 belts in all rear seating positions.[110] NHTSA concurs that 36 percent is too high a value to begin allowing CRSs to be designed only for vehicles with Type 2 belts in all rear seats. Some people driving MY 2006–2007 vehicles may not have the economic means to purchase a newer vehicle with Type 2 belts in all rear seats. This decision to retain the Type 1 test advances equity in vehicle safety by ensuring that children are equally protected by child restraints no matter the economic status of their caregiver or the age of the vehicle they are riding in. This decision accords with the Safety Act and the principles of E.O. 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' [111]

NHTSA's intent in the NPRM for testing CRSs with Type 2 belt installation and removing the Type 1 belt test was to encourage future CRS designs that take advantage of the shoulder belt portion of the seat belt to reduce excursions. We also sought to reduce unnecessary test burdens. However, we recognize the possibility of CRS manufacturers restricting the installation of their CRSs with Type 1 belts. While Standard 213 would not prohibit CRS manufacturers from voluntarily instructing owners they may use the CRS with a Type 1 belt, we have seen that typically manufacturers do not recommend any installation that is not in FMVSS No. 213, other than Type 2 belt installations which are not yet required in FMVSS for non-booster CRSs. For example, CRS manufacturers typically prohibit the use of CRSs in a non-forward-facing vehicle seating position, even though CRSs are highly effective in the field when subjected to crashes in all directions (which mimic the accelerations of a non-forward-facing seating position). The agency believes that CRS manufacturers prohibit this orientation because their CRSs are not tested in that manner in the FMVSS No. 213 sled test protocol. NHTSA is retaining the Type 1 belt provisions to assure the continued wide availability of CRSs to caregivers with vehicles with only Type 1 belts in rear seats.

[109] Under FMVSS No. 222, ''School bus passenger seating and crash protection,'' school buses with a gross vehicle weight rating (GVWR) of over 4,536 kg (10,000 lb) (large school buses) are not required to have passenger seat belts. If a manufacturer voluntarily installs passenger seat belts, it may be a Type 1 or Type 2 belt, although NHTSA recommends Type 2 belts if a decision-maker had to choose between the two. School buses with a GVWR up to 4,536 kg (10,000 lb) (small school buses) are required to have Type 2 belts.

[110] Vehicle registration data for passenger vehicles (cars and light trucks) were obtained from R.L. Polk's National Vehicle Population Profile (NVPP), which is a compilation of all passenger vehicles that have been registered in compliance with State requirements. (R.L. Polk is a foundation of IHS Markit automotive solutions.)

[111] January 20, 2021.

Retaining the requirement for CRS to be certified as meeting FMVSS No. 213 when anchored by the Type 1 seat belt best assures CRSs anchored with Type 1 seat belts will continue to meet FMVSS No. 213. In current CRS designs, the lap belt portion of the Type 1 and Type 2 belt installation follow the same routing path and the shoulder belt portion has minimal interaction, so sled test results with Type 1 belt and Type 2 belt installation are similar. Even though there were only a few test comparisons in the NPRM, we see this design commonality among CRS designs and expect similar performance in installations using Type 1 and Type 2 belts as the shoulder portion of the Type 2 belt has little interaction with the CRS during the test and does not, for example, hold down the top of the CRS back. However, future designs could change and the shoulder portion of the Type 2 belt could be routed in a different manner on a particular child restraint. NHTSA is retaining the Type 1 belt provisions to ensure that a CRS anchored with a Type 1 belt will meet the standard's requirements just as it will have to meet the standard when anchored with a Type 2 belt.

SBS suggests that, to reduce compliance costs, the standard could provide that if a child seat meets the requirements with a Type 1 belt, it will not be tested with a Type 2 belt. NHTSA has decided not to adopt that approach. If future child seat designs change and Type 1 and Type 2 belts are no longer routed the same way through the child seat, subjecting CRSs to testing with both the Type 1 and Type 2 belts assures the child restraint will meet the standard when anchored using either belt type.

Lastly, retaining the requirement to certify CRS with the Type 1 seat belt until 2029 provides time for pupil transportation programs to use current child restraints on vehicles that only have Type 1 belts. And from now until 2029, we anticipate that manufacturers will be able to develop ''school bus child restraint systems,'' permitted by this final rule, which are CRSs that are designed for exclusive use on school bus seats. As a result of this rule, specially designed CRSs will be able to step in when the lap-belt attachable child restraints are no longer required to be made. We also believe that, between now and September 1, 2029, more school buses will be equipped with Type 2 belts compared to Type 1 belts. This is because FMVSS No. 208 requires Type 2 belts on small school buses rather than the formerly required Type 1 belts, and because increasing numbers of schools are ordering large school buses with Type 2 belts rather than Type 1 belts when they seek to have passenger seat belts on the vehicles.

Basis for the 90 Percent Estimate

Child restraint systems will be subject to the requirement to meet FMVSS No. 213 with a Type 1 belt until September 1, 2029, to allow time for the on-road vehicle fleet to change to a fleet with Type 2 belts in rear seats.[112] In 2004, NHTSA issued a final rule requiring all light vehicles to be equipped with Type 2 belts in all designated rear seating positions by September of 2007.[113] Data indicate that 36 percent of the 2022 light duty vehicle fleet are from model years 2000–2007 [114] and may not have Type 2 belts in all rear seating positions. The same data indicate that by 2029, 90 percent of the light duty vehicle fleet will be vehicle model year 2008 and later, meaning that 90-plus percent of vehicles in the light duty vehicle fleet will be equipped with Type 2 belts in all rear seating positions from 2029 onward.

NHTSA agrees with SRN and SBS's concerns regarding the availability of CRSs that can be installed with Type 1 belts to persons with older vehicles. We are mindful that a portion of vehicles in the vehicle fleet will only have Type 1 belts in some rear seating positions. We also know that this portion of vehicles will decrease every year. With the decreasing availability of Type 1 belts in the fleet, the need to require CRSs to meet Type 1 belt requirements lessens with time.

Using the 2022 vehicle fleet data set, we can look at the cumulative percentage of vehicles of a specific model year or newer (see Table 6). Data shows that 91 percent of all light duty vehicles are MY 1999 or newer, 95.3 percent are MY 1994 or newer and 97 percent are MY 1989 or newer. Assuming the fleet continues aging in a similar manner [115] we can estimate that 90 percent of the light duty vehicles will be MY 2008 or newer in 2029, 95 percent of them in 2034 and 97 percent of them in 2039 (see Table 7).

TABLE 6—PERCENTAGE OF VEHICLES IN THE 2022 VEHICLE FLEET BY RANGE OF VEHICLE MODEL YEARS

| MY Range | Cars (%) | LTVs (%) | All LDVs (%) |
|---|---|---|---|
| **Percentage of MY Range** | | | |
| 1984–2022 | 97.1 | 98.7 | 98.1 |
| 1985–2022 | 96.9 | 98.6 | 97.9 |
| 1986–2022 | 96.7 | 98.4 | 97.7 |
| 1987–2022 | 96.4 | 98.2 | 97.5 |
| 1988–2022 | 96.2 | 98.0 | 97.3 |
| 1989–2022 | 95.9 | 97.7 | 97.0 |
| 1990–2022 | 95.6 | 97.4 | 96.7 |
| 1991–2022 | 95.4 | 97.1 | 96.4 |
| 1992–2022 | 95.1 | 96.8 | 96.1 |
| 1993–2022 | 94.7 | 96.5 | 95.8 |
| 1994–2022 | 94.3 | 96.0 | 95.3 |
| 1995–2022 | 93.9 | 95.3 | 94.8 |
| 1996–2022 | 93.3 | 94.5 | 94.0 |
| 1997–2022 | 92.6 | 93.7 | 93.3 |
| 1998–2022 | 91.7 | 92.5 | 92.2 |
| 1999–2022 | 90.5 | 91.3 | 91.0 |
| 2000–2022 | 89.1 | 89.5 | 89.4 |

TABLE 7—PROJECTED YEARS FOR MY 2008 OR NEWER SHARE

| Share (%) | Cars | LTVs | All LDVs |
|---|---|---|---|
| **Projected Year for MY 2008+ Share** | | | |
| 90 | 2029 | 2029 | 2029 |
| 95 | 2036 | 2033 | 2034 |
| 97 | 2044 | 2037 | 2039 |

We agree that eliminating the Type 1 installation tests when 36 percent of the vehicle fleet is older than 2008 MY vehicles would be premature for the reasons discussed above. But Type 1 installation tests become less necessary for safety with the continued reduction of the share of older vehicles (older than 2008 MY) having Type 1 belts. The Type 1 tests may be preventing CRS manufacturers from designing lap-shoulder belt paths that may function as a tether. This pseudo-tether would reduce a child's head excursions, reducing injury severities and lowering the fatality risk for a larger portion of the market.

Accordingly, after balancing the above considerations, NHTSA will proceed with eliminating the Type 1 installation provisions but delay the effective date until September 1, 2029. This will give enough time for 90 percent of the vehicle fleet to be comprised of vehicles MY 2008 or newer. Thus, CRS manufacturers will continue to produce CRSs capable of Type 1 installations to

[112] As explained in the next section, child harnesses will be tested indefinitely with the Type 1 belt.

[113] NHTSA issued a final rule on December 8, 2004 requiring all vehicles with a GVWR less than 10,000 pounds (light duty vehicles) to be equipped with Type 2 belts in all designated rear seating positions by September 1, 2007. The requirements were phased in. 69 FR 70904.

[114] Vehicle registration data for passenger vehicles (cars and light trucks) were obtained from R.L. Polk's National Vehicle Population Profile (NVPP), which is a compilation of all passenger vehicles that have been registered in compliance with State requirements. (R.L. Polk is a foundation of IHS Markit automotive solutions.)

[115] The pandemic slowed down sales due to supply chain issues.

families with older vehicles that have Type 1 belts in rear seating positions.

The agency will also sunset the requirement of providing a diagram with the child restraint system installed with lap belt (S5.5.2(l)(2)) as it will no longer be a requirement, but we note that manufacturers can voluntarily provide such diagram after the requirement sunsets.

*b. Installing Harnesses*

A ''harness'' is a type of child restraint system. (When we refer to a ''harness'' in this section (b), we mean a harness that is not exclusively produced for school bus use.) ''Harness'' is defined in FMVSS No. 213 as ''a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child'' (S4). The child wears the harness like a vest and typically sits directly on the vehicle seat wearing the harness. A harness does not boost the child. A harness is not a booster seat.

Currently under FMVSS No. 213, a harness is attached to the standard seat assembly in a compliance test by way of the Type 1 belt and a tether. It makes sense that harnesses are attached with a Type 1 belt, as the purpose of a harness is to restrain a child's upper body in the absence of a shoulder belt,[116] *i.e.,* when there is only a Type 1 belt in the vehicle. The November 2, 2020 NPRM proposed replacing the Type 1 seat belts on the standard seat assembly with Type 2 seat belts. Under the regulatory text of the NPRM, harnesses would have been attached to the standard seat assembly by the Type 2 seat belt because only Type 2 belts would be on the standard seat assembly.

As explained above, after considering SRN and SBS's comments, NHTSA has decided in this final rule that the Type 2 seat belt on the standard seat assembly should not fully replace the Type 1 belt. There is a safety need to be able to assess the performance of child restraints made for Type 1 belts. NHTSA has made a similar determination relative to harnesses. Harnesses are designed for use with a Type 1 belt. A harness provides upper body restraint to children when only a Type 1 seat belt is present. Harnesses should continue to be tested with the Type 1 belt on the standard seat assembly to assess their performance when installed with Type 1 seat belt, *viz.,* to assess their ability to provide upper body restraint. For such an assessment to be true, the influence of the shoulder belt should be excluded from the test.

Thus, not only is testing harnesses with a Type 1 belt reflective of their intended use, testing harnesses with a Type 2 belt would be troublesome. FMVSS No. 213 does not allow harnesses to be tested with the Type 2 belt that is currently on the standard seat assembly because it does not make sense to do so. A Type 2 belt is simply a lap/shoulder belt, and if a lap/shoulder belt were routed in front of a child, like with an adult, the harness is not functioning as a child restraint system.[117] Devices designed to simply route a Type 2 belt are not ''child restraint systems'' because they do not restrain, seat, or position children in a motor vehicle.

For the above reasons, we have decided it does not make sense to change the status quo by testing harnesses with a Type 2 belt. The purpose of a harness is to provide upper body restraint in a vehicle with only a Type 1 belt, so that is how harnesses should be tested. It would not be sensible to assess the devices with a Type 2 belt if the Type 2 belt is what is restraining the child occupant. Accordingly, this final rule specifies that harnesses will be tested with the Type 1 belt. The provision does not sunset in 2029.

NHTSA has been contemplating the role that harnesses should have in child passenger safety going forward. There have been so many child passenger safety achievements over the years, but harnesses seem to have been left behind. Among other things, NHTSA has required: Type 2 belts in rear seating positions for the betterment of children, a dedicated child restraint anchorage system, side curtain air bags that can benefit children who sit raised up on the vehicle seat, side impact protection requirements for child restraint systems, and labeling provisions geared to keep children in the highly protective confines of a child restraint system longer. Additionally, the agency is learning more about the effectiveness the measured seated height, *i.e.,* boosting, may have for a child so they are better able to maintain an in-position posture in a crash. Yet, harnesses are excepted from or are unable to provide the advantages of these developments to a child occupant. NHTSA is interested in exploring what role, if any, harnesses should have in the modern era of child passenger safety.

## VIII. Communicating With Today's Caregivers

*a. The CRS Owner Registration Program*

1. Background

This final rule amends FMVSS No. 213's (S5.8) CRS owner registration program and associated labeling requirements relating to the program. This final rule removes many of the standardization requirements for the information card portion of the registration form and provides additional options to reflect modern advances in communication technology, allowing manufacturers to better communicate with today's caregivers.

NHTSA created the CRS owner registration program in 1992 to improve the number of CRS owners responding to recalls from manufacturers.[118] It is vital that CRS owners are made aware of CRS recalls so they can complete the recall process by having their CRS either remedied or replaced by the recalling manufacturer. The number of CRS owners who respond and complete the recall process with a recalling manufacturer contributes to NHTSA's calculation of the *recall completion rate,* and NHTSA is committed to improving that number. The agency believes that the adopted amendments discussed below will further that goal by giving manufacturers increased flexibility to communicate the importance of the CRS owner registration programs with their customers.

This final rule adopts virtually all the proposed changes to the CRS owner registration program described in the NPRM. Notably, this final rule removes restrictions on the messaging and design of the information portion of the card (the top part of the card above dashed line, as shown in Fig 9(a) of current FMVSS No. 213). In response to a comment, the final rule also gives CRS manufacturers the flexibility to include a QR code on the registration form to increase ease of registration for today's caregivers. Second, in response to a comment, this final rule requires that a space for a phone number be included on the ''mail-in'' portion of the card (the bottom part of the card below dashed

[116] It is the agency's understanding that in the past, the Type 1 belt was routed through a belt path that was sewn on the harness *behind* the child's back, but nowadays it appears many harnesses route the belt in front of the child.

[117] Standard 213 defines a ''child restraint system'' as ''any device, except Type 1 or Type 2 seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 36 kilograms (kg) (80 [pounds]) or less.''

[118] Final rule, 57 FR 41428, September 10, 1992. NHTSA requires manufacturers to record and maintain records of persons registering as owners or purchasers of child restraint systems for a period of not less than six years from the date of manufacture of the CRS. 49 CFR part 588, ''Child restraint systems recordkeeping requirements.''

line, as shown in Figure 9(a) of current FMVSS No. 213).

The purpose of the CRS owner registration program is to increase CRS recall completion rates, and that purpose has not changed since the program's inception in 1992. In the late 80s and early 90s, NHTSA believed that the recall completion rate could be increased by disseminating recall information directly to individual owners. Prior to the program, consumers were only indirectly notified of a safety recall by notice to the general public, such as postings at pediatricians' offices. Evidence at the time showed that CRS owners were eager to know if their CRS was recalled and were highly motivated to remedy their CRS if it had been recalled.[119] However, before the CRS owner registration program, there was only a 10 to 13 percent completion rate for CRS recalls. Given this paradox, NHTSA believed the recall rate was so low because owners were unaware that their CRS had been recalled. NHTSA adopted the CRS owner registration program to facilitate direct notification to owners in a recall campaign.

Since 1992, the average recall completion rate has increased from percentages in the low teens to 40 percent in recent years. Although this increase has moved the completion rate in the right direction, the agency seeks to increase the rate, especially considering that the CRS recall completion rate is low compared to the recall completion rate for vehicles, which was an average of 79 percent between 2006 and 2015. NHTSA believes the recall rate can be increased by increasing the CRS registration rate, which is currently around 23 percent. That 23 percent is particularly low considering the mail-in card includes paid postage and takes minimal effort to fill out.

The registration form consists of two parts.[120] The first part is the ''information card,'' which contains language on the importance of registering the CRS and instructions for how to register. The second part is the ''mail-in card,'' which is to be filled out, and mailed to the manufacturer, by the owner. On the mail-in card, manufacturers must preprint their return address and information identifying the model name or number of the CRS to which the form is attached, so that owners do not need to look up and provide that information themselves, as looking up the information could serve as an impediment to completing the registration process. The mail-in card must have distinct spaces for the owner to fill in their name and address and must use tint to highlight to the owner that minimal input is required to register. To distinguish the registration form from a warranty card that some caregivers choose to ignore, the requirements prohibit any other information from appearing on the registration form, except for identifying information that distinguishes a particular CRS from other systems of that model name or number.

In the 1992 final rule, NHTSA decided to make the registration form highly standardized.[121] This was based off information the agency had gathered from a study of consumers' attitudes about the then-proposed program. Researchers found that participants—

> [I]ndicated that they would be most likely to return a pre-addressed, postage-prepaid card with an uncluttered graphic design that clearly and succinctly communicates the benefits of recall registration, differentiates itself from a warranty registration card, and requires minimal time and effort on the participant's part.

NHTSA is encouraged that CRS recall completion rates have increased after the final rule, which is a clear indicator that the CRS owner registration program was an important step to improving recall remedy rates. However, given the advances in communication technologies and improved capabilities of manufacturers to communicate with their customers, the agency is confident the recall rate can be increased by way of the new technologies. NHTSA believes giving manufacturers more flexibility in their communication methods with customers will increase registration and recall completion rates. Thirty years have passed since the registration form requirements were finalized in the 1992 final rule. In that time, a generation of children has grown up to become the new caregivers of today. This new generation grew up with and continues to interact with rapidly changing advancements in electronic outreach, communication, and technology. NHTSA believes that the advantages gained from highly standardizing the mail-in form at the outset of the program in 1992 can be surpassed by the gains from giving manufacturers increased flexibility to communicate the importance of registering a CRS and in the means of registering, and will lead to increased registration rates. The agency also understands the importance of ensuring registering CRSs remains as straightforward and easy as possible, and we considered that important balance in issuing this final rule.

2. Comments to the NPRM and NHTSA's Responses

General

The agency received thirteen comments on the proposed amendments to the CRS owner registration program from private individuals, public entities, manufacturers, advocacy groups, hospitals, private companies, and research institutions. The overwhelming majority supported the relaxation of restrictions for the information card portion of the registration form. An overwhelming majority also supported the option of allowing manufacturers to include a QR code on the information card to improve ease of registration for many of today's caregivers.

Information Card

NHTSA proposed to remove the restrictions on size, font, color, layout, and attachment method of the information card portion of the CRS registration form. The agency also proposed that the wording on the information card would no longer be prescribed, giving CRS manufacturers leeway to use their own words to convey the importance of registering a CRS and instructions on how to register. The agency also proposed to apply these relaxed style and wording requirements to labels and printed instructions for proper use referencing the registration form.

As stated above, most commenters expressed strong support for the proposed design changes to the information card. However, SRN notes a concern that too much variability in the designs of the information card could render the registration form unrecognizable. The commenter believes that caregivers typically purchase multiple CRSs as their child grows so it would be a drawback if registration forms were not readily recognized as a registration forms. SRN also comments that NHTSA should not assume that all manufacturers will be equally thoughtful in their design of the information card, and that it is possible some manufacturers will use cluttered or difficult-to-read designs. The commenter recommends that NHTSA develop and supply standard pictograms that manufacturers can use on the information cards to limit the amount of artistic freedom manufacturers have. Additionally, SBS suggests that NHTSA encourage an industry-wide approach to design of the information cards to ensure consistency

[119] NPRM, February 19, 1991, 56 FR 6603, 6604.

[120] See Figures 9a and 9b of § 571.213 Standard No. 213; Child restraint systems.

[121] Final rule, supra, 57 FR at 41429, col. 2.

of messaging and to guard against conflicting messaging being established by manufacturers.

Agency Response

Although there is a non-zero risk some manufacturers may use designs or language for the information card that are difficult to read or understand, NHTSA believes that this risk is relatively small and is outweighed by the advantages that could be gained by increased design innovation. It is in a manufacturer's best interest to increase recall completion rates so that children are as protected as possible in their restraints, so it would not be logical for a manufacturer to intentionally design a cluttered registration form that is difficult to read. NHTSA believes there may be benefits to different designs in information cards, as standardized features may lose their efficacy over time. NHTSA adopted registration form requirements in 1992 [122] and updated the requirements to include paid postage in 2005.[123] In 2005, NHTSA reported a registration rate of 27 percent. Currently NHTSA estimates having a 23 percent registration rate. While there may be other factors for the registration rates decline, NHTSA believes the rigid design of the registration form could be a factor in the decline and a barrier to increase the registration rates. Because manufacturers have the resources and expertise to design their products to best appeal to their customers, a top-down approach established by NHTSA could be counterproductive to the benefits of varying designs and creative freedom. For the above reasons, NHTSA declines at this time to adopt SRN's recommendation that NHTSA put specific creative limitations on the information card.

Style and Language Requirements for the Information Card

The University of Michigan Transportation Research Institute (UMTRI) and the Children's Hospital of Philadelphia (CHOP) cautioned that removing all style and language requirements could hamper the goals of increasing registration numbers. CHOP recommended that all materials be written at a 3rd–5th grade reading level to ensure that all caregivers, regardless of their level of education, will be able to understand the importance of registering and how to do so.

Agency Response

We understand the benefits of CHOP's recommendation on having the registration form text be written at a 3rd–5th grade level to ensure all caregivers will be able to understand the material in the registration form. However, new requirements on readability and how would they be measured is out of scope of this rulemaking. Since there are different readability scales and tools to measure readability, the agency would have to research which scale and methods are most appropriate to evaluate readability consistently so that the requirements are enforceable. We appreciate the thoughtfulness of CHOP's comment and recommend that CRS manufacturer consider developing their registration forms with this issue in mind.

Mandatory Statement To Distinguish the Information Card

In addition to the style and language aspects of the information card, NHTSA also proposed to permit or possibly require a statement to be present on the information card that informs the CRS owner that the information collected through the registration process is not a warranty card and that the information will not be used for marketing purposes. Comments were generally supportive of requiring such a statement on the information card.

Agency Response

NHTSA supports inclusion of the statement on the information card and is expressly permitting its inclusion. However, NHTSA has decided not to require the statement. Part of the goal of this rule is to provide increased flexibility to manufacturers to drive more effective registration cards, and the agency does not know how a mandated statement may limit the design choices manufacturers make in designing their information cards. In some instances, the statement may take away from the overall goal of a specific design. From the agency's point of view, inclusion of the statement may be beneficial in some instances, but to be consistent with NHTSA's goal to increase manufacturer creativity on information cards, the agency believes inclusion of such a statement is the manufacturer's choice, not the agency's. Accordingly, NHTSA agency has decided not to mandate the statement at this time.

Electronic Registration Form

In addition to the amendments to the information card, NHTSA has also decided to adopt the NPRM's proposals to the electronic registration form.

FMVSS No. 213 currently permits manufacturers to provide a web address on the information card to enable owners to register online (S5.8.1(d)). The web address must provide a direct link to an ''electronic registration form'' meeting the requirements of S5.8.2 of the standard. Under S5.8.2, the electronic registration form must conform to a specified format and include certain content, including: (a) A prescribed message to advise the consumer of the importance of registering; (b) prescribed instructions on how to register; and (c) fields to record the CRS's model name or number and date of manufacture, and the owner's name, mailing address, and optionally, the owner's email address.

The NPRM proposed to amend S5.8.1(d) so that the electronic form may be reached by using methods other than a web address, such as a QR code or tiny URL. NHTSA also proposed to change the requirements of (a) and (b) above, from NHTSA-prescribed messages to messages crafted by the CRS manufacturer.

Comments regarding these two proposals were overwhelmingly positive and the agency has decided to adopt the proposals for the reasons stated in the NPRM. However, Graco commented that scannable registration aids should only use open-source or non-proprietary methods and not require consumers to install any special software onto their cell phone. Additionally, Graco recommended that where a scannable graphic is used, a full or reduced sized URL should be printed on the information card to allow direct access to the registration website. In response, NHTSA believes that prohibiting the installation of specific software—such as a QR code reader—would defeat the purpose of exploring different electronic means of registration, as some CRS purchasers may have cell phones without QR code reader software installed. Accordingly, the agency has decided against Graco's recommendation to prohibit the prompt to install specific software when scanning a QR code. Regarding Graco's second comment, NHTSA agrees that requiring a printed URL on the information card allowing direct access to the registration website would ensure the consumer could reach the registration page if they do not have the technology or ability to scan the QR code. Therefore, NHTSA is adopting this recommendation as part of the final rule.

Mail-In Card

The NPRM sought comment on whether other elements should be

[122] 57FR41428.

[123] 70FR53569.

added to or eliminated from the currently required mail-in card, and if leeway should be given on how the mail-in card is formatted.[124] NHTSA received only one comment regarding the mail-in card. Graco commented that it would be beneficial to include a space on the mail-in form for a purchaser to input their telephone number. NHTSA agrees that receiving telephone numbers from CRS purchasers will give manufacturers increased flexibility to communicate with owners about potential recalls. Accordingly, NHTSA is adopting the requirement that a space for a telephone number (provided at the consumer's option) be included on the mail-in card as well as on all electronic registration forms as part of the final rule. FMVSS No. 213 Figure 9a has been updated accordingly to reflect this amendment.

Detachable Mail-In Card

The agency requested comment on whether a two-part registration form was warranted, and, proposed that manufacturers can decide how the information card is attached to the mail-in card.[125] The agency also stated in the NPRM that the mail-in card portion should be easily detachable form the mail-in card portion without the use of scissors and the like. NHTSA did not receive any comments on this aspect. This final rule provides the proposed flexibility on how the information card is attached, while specifying that the information card should be easily detachable.

Information on Labels and Printed Instructions (Owner's Manuals)

The NPRM proposed that provisions in FMVSS No. 213 requiring information on registering CRSs on child restraint labels and in owner's manuals also be amended to reflect the adopted changes.[126] NHTSA did not receive any comments on this proposal. The agency has adopted this proposal for the reasons provided in the NPRM.

3. Other Issues

SBS recommended that NHTSA create a focused campaign to emphasize the importance of caregivers registering their CRS. SBS indicated that combining registration with a perk like an extended warranty could help increase registration rates. This final rule is focused on amending the style requirements for the information and mail-in card, so a focused media campaign would be outside the scope of this rulemaking. That being said, NHTSA will continue to work toward raising awareness surrounding the importance of registering CRSs. NHTSA also encourages any effort by industry to incentivize registration.

Salem-Keizer Public Schools suggested adding a requirement that manufacturers send an electronic receipt for electronic CRS registrations, and that the receipt should indicate the date when the CRS owner will no longer be notified of a potential recall. NHTSA has decided not to include this requirement in the final rule. CRS manufacturers may consider sending this information voluntarily. If a manufacturer sends an electronic registration receipt shortly after a consumer registers, NHTSA considers such a receipt as part of the registration process. Thus, such a communication would be consistent with our expectation that the consumer information gathered by the caregiver's registration will only be used for recall purposes. NHTSA views a registration receipt as acceptable as long as it is sent shortly after the registration and the content of the receipt only conveys information related to the registration.

4. Summary

NHTSA believes that the amendments to FMVSS No. 213 discussed above will increase registration rates and by extension, recall completion rates. The amendments will enhance the visibility of the registration program by allowing manufacturers additional creativity in their messaging, while at the same time increasing ease of registering by taking advantage of modern technology. Improving messaging and ease of registration will increase CRS recall completion rates and lead to improved safety outcomes for child passengers.

*b. Information on Correctly Using CRSs*

1. Background

This final rule amends multiple labeling and owner use information requirements under FMVSS No. 213. Specifically, the rule addresses multiple aspects of FMVSS No. 213 S5.5 and S5.6. The safety need addressed by this final rule is to increase the number of children properly secured in child restraint systems, which includes correctly using the child restraint that is appropriate for the child's size. This need exists for both add-on (portable) child restraints and built-in child restraints. (These terms are defined in FMVSS No. 213, S4.) Thus, the rule amends the labeling and owner use information requirements for add-on and built-in child restraints.

The NPRM proposed three amendments to the labeling requirements outlined in S5.5 and S5.6: (1) Requiring that manufacturers that sell CRSs that can be used in multiple ''modes'' (forward or rearward) provide information about the weight and height of children for each mode of use; (2) requiring that CRSs may only be recommended for forward-facing use by children weighing a minimum of 12 kg (26.5 lb); (3) requiring that the recommended use of a booster seat be increased from the minimum of 13.6 kg (30 lb) to 18.2 kg (40 lb). In addition to these three amendments, the NPRM also proposed easing labeling restrictions to allow manufacturers increased flexibility in conveying use information to consumers.

There were a total of 18 comments regarding these sections of the NPRM. There was general support for the proposed labeling changes. Most of the comments regarding the three proposals were supportive, but some comments did recommend different amendments for various reasons. As discussed in detail below, NHTSA will be adopting the three proposals.

NHTSA will also be adopting the NPRM's proposed changes that ease labeling requirements. JPMA commented that giving manufacturers flexibility to use their own language and diagrams on labels could better facilitate the production of certain CRS models that are compliant with regulations in multiple countries, including Canada. JPMA also noted that decreasing the need for separate labeling could help reduce overall production costs and aid in keeping CRSs affordable. Comments to the NPRM's proposal to delete paragraph S5.5.2(k)(2) from FMVSS No. 213 were also generally supportive. Graco indicated that the requirement has created confusion for caregivers as to the actual maximum permitted rear-facing weight limit for their child restraint, and that the information consumers need to make the right usage decisions based on their child's weight and height will be better provided on the label(s) containing the information specified in paragraph S5.5.2(f). NHTSA agrees and will be deleting paragraph S5.5.2(k)(2) in this final rule.

2. Labeling by Mode Use

NHTSA and the entire child passenger safety community strongly recommend that children up to the age of 1 ride rear-facing at least up to the age of 1. NHTSA further recommends that children 1 to 3 years of age ride rear-facing for as long as possible, until they reach the manufacturer-recommended upper height or weight limit for riding

[124] 85 FR at 69426, col. 1.

[125] 85 FR at 69425, col. 3.

[126] 85 FR at 69426.

rear-facing in the CRS. Finally, NHTSA recommends that children 4 to 7 years of age ride forward-facing in CRSs with internal harnesses so long as they are within the height and weight limits of their particular CRS, as established by the CRS's manufacturer.

Currently, FMVSS No. 213 S5.5.2(f) requires a statement, for the overall maximum and minimum height and weight ranges of the children for whom the CRS is recommended, which are not broken down by modes of use. This can result in confusion for caretakers, as the information only tells the caretaker whether that CRS is appropriate for their child, but not whether it is appropriate for the child to face forward or rearward in a convertible CRS. For example, consider a convertible CRS that states it is fit for use by children weighing 5 to 65 lb (2.3 to 29.5 kg) and with heights up to 48 inches (121.9 cm). Under the current standard, this would comply with the requirements under FMVSS No. 213 S5.5.2(f). In this scenario, a caretaker has no way of knowing what the height and weight limits are for forward- and rear-facing use. NHTSA proposed to amend the requirements such that manufacturers that sell CRSs that can be used in multiple ''modes'' (forward and rearward facing) would have to provide information about the weight and height of children for each mode of use.

Comments and NHTSA's Response

The comments were overwhelmingly supportive regarding the NPRM proposal to require CRS manufacturers to provide use information that describes the height and weight recommendations for each mode of use in which the CRS can be used. Accordingly, NHTSA is adopting this requirement for the reasons explained in the NPRM.

Graco suggested that all proposed changes affecting labels become mandatory concurrently. Additionally, Graco suggested that manufacturers be provided the option to relocate the information in S5.5.2(f) upon issuance of the final rule or a short time thereafter. NHTSA is establishing a 1-year compliance date for the labeling requirements as well as allowing early compliance. This gives flexibility to the manufacturers on when they want to introduce those changes. However, if Graco is asking whether it may meet only amended S5.5.2(f) early and not the other amendments to FMVSS No. 213, NHTSA's answer is no. If a manufacturer chooses to implement early an amendment that has a compliance date of one year, it must implement all the amendments that have a one-year compliance date. This issue is further discussed in the Lead Time and Compliance Dates section of this preamble.

3. Increasing the Forward-Facing Weight Recommendation

As discussed in the section above, NHTSA and the entire child passenger safety community agree that children up to the age of 1 should be kept riding rear-facing at least up to the age of 1. However, under the current standard, over half the children under 1 year of age do not fall under the recommendation. The current standard—FMVSS No. 213 S5.5.2(k)(2)—sets the minimum weight recommendation for a child in a forward-facing CRS at 9 kg (20 lb). A 50th percentile 1-year-old weighs 9.9 kg (22 lb), which makes the 9 kg (20 lb) threshold far too low.

CRSs used rear-facing support the infant or toddler's posterior torso, neck, head, and pelvis, and help to distribute crash forces over the strongest parts of the infant or toddler's body. Developmental considerations, including incomplete vertebral ossification, more horizontally oriented spinal facet joints, and excessive ligamentous laxity put young children at risk for head and spinal injury. CRSs used rear-facing address this risk by supporting the child's head, preventing the relatively large head from moving independently of the proportionately smaller neck.

Although NHTSA recommends that children 1 to 3 years old ride rear-facing in the appropriate CRSs for as long as possible to address the above risks, many caregivers are not following this recommendation and instead appear to be following labeling instructions that specify a turnaround weight of 9 kg (20 lb). While the instructions comply with FMVSS No. 213, they have led to less-than-optimal positioning of infants and toddlers in vehicles. NCRUSS data indicate that, among children weighing less than 9 kg (20 lb), 93 percent were restrained in a CRS rear-facing, yet among children weighing 9 to 13.1 kg (20 to 29 lb), only 22 percent were restrained rear-facing in a CRS. The agency proposed to require that CRSs may only be recommended for use in the forward-facing direction by children weighing a minimum of 12 kg (26.5 lb), which corresponds to the weight of a 95th percentile 1-year-old, a 75th percentile 18-month-old and about a 50th percentile 2-year-old.

Comments and NHTSA's Response

Comments were generally supportive of the increase in turnaround weight from 9 kg (20 lb) to 12 kg (26.5 lb). All comments on this issue supported an increase, but some comments recommended a different weight. For the reasons discussed below, NHTSA has decided to adopt the 12 kg (26.5 lb) increase in this final rule.

The American Academy of Pediatrics (AAP), UMTRI, and Safe Ride News (SRN) recommend an increase to 13.6 kg (30 lb). AAP states that, ''Most rear-facing-only and convertible seats currently on the market can accommodate a 30-lb child rear-facing,'' and that increasing the recommendation to 30 lb would help demonstrate to caretakers the benefits of keeping their child rear-facing as long as possible. UMTRI argues that a 30 lb recommendation would correspond to a 75th percentile 2-year-old, encompassing more of that age group than the proposed 26.5 lb recommendation. SRN notes that a 30 lb recommendation would be an easier weight milestone for caretakers to track and that it would be preferable to well exceed the weight of a 95th percentile one-year-old.

While NHTSA understands the arguments in favor of this recommendation, increasing the turnaround weight to 13.6 kg (30 lb) would be substantially beyond the minimum recommendation for all 1-year-old children riding rear-facing. We believe it would be best to thoroughly vet possible unintended consequences of a 13.6 kg (30 lb) limit for forward-facing CRSs prior to making such a change. One concern relates to how a change to 13.6 kg (30 lb) might curtail the ability of low-weight older children (*e.g.,* 4- and 5-year-old children who are 1st to 5th percentile in weight) to ride in forward-facing CRSs when the children outgrow a CRSs used rear-facing because of their height. A 13.6 kg (30 lb) turnaround weight may limit the availability of any kind of child restraint system for these children as the children would be too tall for CRSs used rear-facing but under the 13.6 kg (30 lb) turnaround height. If CRSs were unavailable, a caregiver might place the child in the vehicle seat belt alone, significantly raising the safety risk to the child in a crash. NHTSA believes it would be prudent to thoroughly investigate unintended consequences, such as the one described above, that may result from raising the turnaround weight to 13.6 kg (30 lb).

Britax, JPMA, SRN, Graco, and Consumer Reports comment that, instead of a number with a decimal (26.5 lb), it would be beneficial to use a whole number, as caregivers likely don't track their child's weight down to

the half-pound. Graco commented that the number should be a multiple of 5 suggesting a 25 lb weight should be adopted. NHTSA disagrees with establishing a whole number in the standard in this case. Lowering the figure to 11.7 kg (26 lb) would decrease the population NHTSA is trying to target (95th percentile 1-year-old children). On the other hand, increasing the figure to 12.2 kg (27 lb) would slightly increase the population NHTSA is trying to target, but would still not be a multiple of 5 as Graco suggested. The 12 kg (26.5 lb) weight transition is a minimum number and manufacturers can choose a round number greater than 26.5 that best accommodates their CRS design, if they wish to do so.

Graco, SRN, and Volvo recommend using age recommendations as opposed to weight recommendations. NHTSA disagrees that using age as a criterion is preferable to using weight and height, as CRSs are designed and recommended by the manufacturer using weight and height. NHTSA is using weight in lieu of age by establishing minimum weight limits that correspond to the 95th percentile 1-year old child. This ensures that children up to 1 year of age are in CRS that are facing rearwards. The updated minimum child weight recommendation for CRSs that are used in a forward-facing mode aligns the standard to NHTSA's car seat recommendations, which are age based, but also refer to the weight and height recommendations of the CRS.

Also, weight and height characteristics are the most relevant parameters affecting crash force mitigation, rather than a child's age. The standard selects the different child dummies used to evaluate CRSs based on the CRS's weight and height recommendations to ensure the CRS is engineered to safely attenuate and manage crash forces when used by a child who is within the CRS's child weight or height recommendations.

Some commenters support an age recommendation to increase the likelihood that a child would be mature enough to stay properly seated in a CRS (particularly a booster seat). FMVSS No. 213 permits CRS manufacturers to include an age recommendation, as long as that recommendation does not conflict with FMVSS No. 213's requirements. S5.5 states, in pertinent part: ''Any labels or written instructions provided in addition to those required by this section shall not obscure or confuse the meaning of the required information or be otherwise misleading to the consumer.'' [127] Accordingly, NHTSA will not be including an age recommendation as part of the final rule. CRS manufacturers may choose to include an age recommendation for their CRSs, including booster seats, provided the age recommendation comports with S5.5 and all other applicable requirements of FMVSS No. 213.

SBS states that labeling and public messaging on the increase of the minimum forward-facing CRS weight limit should be carefully crafted to avoid conflicting with either best practice recommendations or State laws. (The commenter states: ''26.5 lbs. is rarely the correct weight for children to ride forward facing by these metrics.'') The commenter appears concerned about the interplay of an FMVSS No. 213 turnaround weight of 26.5 lb with best practice recommendations, and State law requirements, that children ought to ride rear-facing until, *e.g.,* a particular age. In response, the increase to 12 kg (26.5 lb.) establishes a minimum turnaround weight; it does not require manufacturers to specify that the child *must* ride forward-facing at 12 kg (26.5 lb). It re-sets the minimum for the turnaround weight by prohibiting manufacturers from instructing that a child weighing less than 12 kg (26.5 lb) may ride forward-facing. The new turnaround weight (increased from the current 20 lb turnaround weight) is more consistent with current recommendations on when to transition a child to forward-facing, meaning this amendment to the standard will bring it more in line with best practice recommendations and related State laws.

4. Increasing the Belt-Positioning Seat Weight Recommendation

NHTSA believes that FMVSS No. 213 currently permits manufacturers to recommend moving children from a CRS with an internal harness to a belt-positioning seat (''booster seat'') too soon. Although NHTSA recommends that children riding forward-facing should remain in a CRS with an internal harness for as long as possible before transitioning to a booster seat, FMVSS No. 213 S5.5.2(f) currently permits booster seats to be recommended for children weighing 13.6 kg (30 lb). Thirty pounds corresponds to the weight of a 50th percentile 3-year-old, and the weight of a 95th percentile 18-month-old. The 2020 NPRM proposed increasing the recommended booster seat weight to 18.2 kg (40 lb) [128] which is greater than the weight of a 97th percentile 3-year-old (17.7 kg (39.3 lb)) and approximately the weight of an 85th percentile 4-year-old. This change in minimum child weight recommended for booster seat use to 18.2 kg (40 lb) would result in more 3- and 4-year-old children being transported in forward-facing CRSs with an internal harness. In the NPRM, NHTSA cited a 2010 study (''2010 study'') based off exclusively NASS–CDS data to explain why the agency proposed to increase the booster seat weight recommendation to 18.2 kg (40 lb).[129]

Comments Received

There were no comments that opposed changing the minimum weight recommendation for belt-positioning seats from 13.6 kg (30 lb) to 18.2 kg (40 lb). Commenters agreed that adopting this amendment would help prevent early transition to boosters, reduce injuries and fatalities of 3- and 4-year-olds, and harmonize the FMVSS with a counterpart Canadian CRS standard. However, several commenters (Dorel, the Insurance Institute for Highway Safety (IIHS), JPMA, a private individual) state that NHTSA should not use NHTSA's 2010 study (''the 2010 study'') as a justification for the amendment.

Agency Response

NHTSA's 2010 study recognized that there were limitations to the conclusions that could concretely be drawn from the study because of how sparse the child occupant data were in the sample. The 2010 FARS data files did not distinguish belt-positioning seats from CRSs with internal harnesses. Because of this, the 2010 study could not use the FARS census data to compare the performance of belt-positioning seats to CRS with harnesses. The 2010 study instead used unweighted NASS/CDS sample data, despite the sparse nature of the child occupant data in NASS/CDS, and supplemental state data, because those were the data available to the agency at the time. Because of the sparse nature of the data, the unweighted data with supplemental state data had to be weighted for the analysis.

NHTSA recognized the limits of the 2010 study from the very beginning, and in December 2020 NHTSA published a

[127] To illustrate, the age recommendation cannot contradict the requirement that booster seats must only be recommended for children weighing more than 40 lb. Thus, by way of example, manufacturers are not permitted to recommend a booster for use by 2- or 3-year-olds.

[128] As discussed previously, the standard uses weight in lieu of age.

[129] Sivinski, R. ''Booster Seat Effectiveness Estimates Based on CDS and State Data''. July 2010. DOT HS 811 338.

new study (''the 2020 study'') examining the effectiveness of different types of CRSs in mitigating both nonfatal injuries and fatalities to 1- to 8-year-old children and compared them to children restrained only by seat belts.[130] The 2020 study was published after the 2020 NPRM and therefore the 2020 study was not available for discussion in the NPRM.

The 2020 study addressed the shortcomings of the 2010 study. In the 2020 study, NHTSA examined the effectiveness of different types of CRSs (CRSs with internal harnesses, and belt-positioning seats) in mitigating both nonfatal injuries and fatalities to 1- to 8-year-old children compared to children restrained only by seat belts. For this analysis, the agency found that FARS data for 2009 and 2016 distinguished CRSs with harnesses from booster seats. These data were not available at the time the 2010 study was published. The agency conducted the analysis in the 2020 report using NASS–CDS data for the years 1998 to 2015 for evaluating effectiveness of CRSs with internal harnesses and belt-positioning seats in mitigating moderate-to-critical injuries and serious-to-critical injuries. The FARS data for the years 2009 to 2016 were used to evaluate the effectiveness of CRSs with internal harnesses and belt-positioning seats in mitigating fatalities.

The presence of the FARS data alleviates most, if not all, of the concerns raised by commenters who pointed out the weaknesses of the 2010 study. The NASS–CDS data analysis in the 2020 study was conducted using the maximum abbreviated injury (MAIS) scale, which is significantly more robust than the KABCO injury scale used in the 2010 study. The child age groups considered in the 2020 analyses were 1 to 3-years-old, 3 to 5-years-old, 4 to 8-years-old and 7 to 8-years-old. Logistic regression analysis of the weighted sample data was conducted. The analysis considered various domain variables, including the type of crash, driver characteristics, child occupant seating position, and restraint type used.

The FARS data analysis in the 2020 study considered vehicles of model years 1999 to 2017, with drivers restrained by seat belts and air bags. The 2020 study used the same child age groups as in the NASS–CDS analysis. The effectiveness of CRSs with internal harnesses and belt-positioning seats in mitigating fatalities was evaluated using double paired comparison analysis as well as logistic regression. The analysis of the FARS datafiles in the 2020 study found similar results to the 2010 study from a double paired comparison analysis as well as the logistic regression. The analysis considered driver restraint status and crash type to mitigate confounding effects on the results.

Dorel expressed concern that NHTSA asserted in the NPRM that children who weigh more than 18.2 kg (40 lb) are ''better protected'' in a CRS with harness than in a belt-positioning seat. The agency believes Dorel misunderstood the statement in the NPRM that, ''NHTSA believes that if belt-positioning seats were only recommended for children weighing a minimum of 18.2 kg (40 lb), more 3- to 4-year-olds will be transported in CRSs with internal harness, where they are better protected at that young age, than in booster seats,'' [131] and offers the following detailed explanation for clarity.

The 2010 study and the 2020 study used child age to evaluate the effectiveness of CRSs with internal harnesses and belt-positioning seats instead of physical characteristics such as weight and height of the child. This is because weight and height information are not available in many cases, which would result in a high percentage of missing values. The 2020 study considered age groups to permit sufficient observations in each of the categories under evaluation. For example, in the 3- to 5-year-old age group, among children in CRSs with internal harnesses, 46 percent were 3-year-olds while only 19 percent were 5-year-olds. Similarly, for this age group, among children in belt-positioning seats, 19 percent were 3-year-olds while 47 percent were 5-year-olds.

Since the weight and height of children vary considerably, there is no one-to-one correspondence between the child age and height and weight of the child. However, as noted in the NPRM, nearly all 3-year-old and about 87 percent of 4-year-old children weigh less or equal to 18.2 kg (40 lb). Additionally, about 25 percent of 5-year-old children weigh less than or equal to 18.2 kg (40 lb). Because of the range in child height and weight for a specific age, NHTSA requires specification of the child weight and height in labels for recommended use of CRSs.

The 2020 study found that for 1- to 3-year-old children, CRSs with internal harnesses were 47.3 percent more effective in mitigating fatalities than belt-positioning seats, and nearly all 1- to 3-year-old children weigh less than 18.2 kg (40 lb). NHTSA proposed an 18.2 kg (40 lb) minimum limit for belt-positioning seat use. Since about 87 percent of 4-year-old children and 25 percent of 5-year-old children also weigh less than 18.2 kg (40 lb), these children would also be recommended to be restrained in CRSs with internal harnesses. The 2020 study found that for 3- to 5-year-old children, CRSs with internal harnesses were 43.1 percent more effective in mitigating fatalities than belt-positioning seats. From these data, NHTSA concludes children in this age group who weigh less than 18.2 kg (40 lb) would also benefit from the increase in the minimum child weight for recommending belt-positioning seat use from 13.6 to 18.2 kg (30 to 40 lb). The effect would be that all 3-year-old children, 87 percent of 4-year-old children, and about 25 percent of 5-year-old children would be recommended to be restrained in CRSs with internal harnesses. This could result in more 3- and 4-year-old children in CRSs with internal harnesses than in belt-positioning seats, and thereby reduced child occupant crash fatalities. As stated above, NHTSA will be adopting the 18.2 kg (40 lb) proposal from the NPRM as part of the final rule, and the agency believes that the 2020 study is a sufficient justification for doing so as it alleviates many of the concerns with the 2010 study.

5. Suggested Additional Booster Seat Labeling

AAP suggests it would be beneficial to have an additional label indicating that a child must be developmentally mature enough to sit properly in a booster seat. NHTSA disagrees that adding this labeling requirement would be appropriate, as the agency is concerned about the efficacy of such a label. Readiness for a booster is a subjective determination that could change depending on a caregiver's judgment of and experience with the child. An agency-worded instruction on how to analyze a child's behavioral characteristics may not be productive. Accordingly, NHTSA will not be including a behavioral labeling requirement as part of the final rule. We note, however, that FMVSS No. 213 permits CRS manufacturers to include this kind of information on the booster label or in the written instructions provided with the restraint, as long as the information does not ''obscure or confuse the meaning of the required information'' or is ''otherwise

[130] Pai, J.-E. ''Evaluation of child restraint system effectiveness,'' December 2020. DOT HS 813 047. Docket No. NHTSA–2020–0093–0054.

[131] 85 FR at 69390.

misleading to the consumer'' (S5.5 in FMVSS No. 213).

Dorel, CHOP, and SRN comment that public messaging for booster seat use should be done carefully so that caregivers do not misinterpret the reason behind amending the standard. These commenters were generally concerned with caregivers thinking that current CRSs on the market targeted at children between 30 to 40 pounds are unsafe, and instead of utilizing those CRSs, they will seat their child without a CRS or booster seat. NHTSA agrees that public messaging is important, and all labeling changes should be communicated to the consumer in the clearest manner possible. We note that, because the labeling change will bring the standard more closely in-line with NHTSA's booster seat recommendations, this change will likely make the messaging from NHTSA on booster seats clearer.

SRN and Volvo suggest that a minimum age be included as a requirement for transitioning to booster seats. NHTSA does not agree that including an age requirement would be appropriate or beneficial. The agency believes particularly strongly about this in the context of booster seats since children of the same age can vary greatly in size. Not all forward-facing CRSs in the market can fit all children less than 5 years old. If a 5-year-old or younger child outgrows their forward-facing CRS due to weight or height but could not be put into a booster seat because of age restrictions on a label, a caregiver would have to acquire another harnessed-CRS or may decide to transport the child without either a CRS with internal harness or booster seat. Purchasing another CRS with internal harness is an expense that many consumers may not be willing to make and transporting the child in a seat belt alone presents serious safety risks. Accordingly, after considering these potential consequences, the agency has decided against including a minimum age requirement for transitioning to a belt-positioning seat.

Volvo comments that children should use booster seats as soon as they are big enough and mature enough to use them so that children can take advantage of a vehicle's advanced seat belt functions. NHTSA disagrees with Volvo, as the FARS data (2009–2016) discussed above indicate that for all crashes, the risk ratio of a fatality for 3- to 5-year-old children restrained in a forward-facing CRS with a harness is 45.6 percent less than the fatality risk for 3- to 5-year-old children restrained with a booster seat. Volvo did not present any data supporting its claims, whereas these data indicate that the children that were restrained in forward-facing CRSs with an internal harness were better protected than children restrained in a booster seat with a vehicle seat belt.

6. Other Recommendations About Labels

SRN commented that NHTSA should encourage an industry-wide approach to redesign labels to ensure consistency of public messaging and to guard against conflicting usage recommendations. NHTSA believes collaboration efforts by industry to optimize CRS labeling is a worthy pursuit. NHTSA is providing flexibility with this final rule, however, and does not believe it would be appropriate to mandate a universal approach to label design as that would essentially replicate the status quo. The agency does not wish to negate any of the benefits that could be gained by giving industry the leeway to design their labels using the words and diagrams they feel is most appropriate for their consumers.

SRN and SBS recommend that NHTSA require a permanent, visible indicator on all CRSs to communicate maximum child height for riding in the CRS. SRN argues that this option is superior to a maximum rear-facing height and weight recommendation and could be provided at little cost to manufacturers. SBS recommends that this visual indicator be mandatory and be located 25 mm (1 inch) below the top of the CRS shell. Although NHTSA agrees that a visual landmark to help the consumer recognize when the child has reached the recommended height may have benefits, the agency has decided not to adopt this recommendation as part of the final rule. For one thing, requiring a 25 mm (1 inch) mark is beyond the scope of this rulemaking. Second, NHTSA is unable to agree that mandating a 25 mm (1 inch) indicator below the top of the CRS shell is the best way forward. We believe CRS manufacturers may want to estimate this visual landmark in a different way, and they are currently free to do so. Further, NHTSA does not currently know if the 25 mm (1 inch) below the top of the CRS shell is an appropriate distance for current CRS designs and in any future designs. NHTSA has not determined if the 25 mm (1 inch) distance is the most effective distance from the head to the top of the CRS shell to mitigate severe injuries or fatalities.

7. Summary

Similar to the agency's approach to the CRS registration form, NHTSA is allowing manufacturers more creative freedom to communicate with their customers on labels, as manufacturers best know their customers and have the resources and expertise to maximize communication with them. CRS misuse and installation mistakes remain a significant problem. The agency reviewed all NASS–CDS and Crash Injury Research and Engineering Network (CIREN) data files for the years 2003 to 2013 for instances in which children 12–YO and younger in CRSs in rear seats of light passenger vehicles sustained AIS 3+ injuries in frontal crashes without rollover. The most frequent cause of AIS 3+ injury to children, at 39 percent, was gross CRS misuse. This final rule will provide manufacturers the opportunity to develop and implement targeted messaging on correct CRS use that could reduce the extent of CRS misuse. NHTSA believes the market provides a significant incentive to designing effective labeling and diagram designs, and an effective deterrent from designing ineffective labeling and diagram designs. Nonetheless, NHTSA will continue to monitor CRS labels and instructions to see how the information changes over time and whether agency action is necessary.

## IX. Streamlining NHTSA's Use of Dummies in Compliance Tests To Reflect CRS Use Today

*a. Introduction*

All child restraint systems must meet FMVSS No. 213's performance requirements when dynamically tested with dummies that represent children of various ages. The current dummies used in compliance testing of add-on and built-in child restraints are the newborn infant, the CRABI–12MO, the HIII–3YO, the HIII–6YO, the H2–6YO, the weighted HIII–6YO, and the HIII–10YO child dummy.[132]

NHTSA selects the test dummy used in a particular test based in part on the height (regardless of weight) or weight (regardless of height) of the children for whom the manufacturer recommends for the child restraint (S7). Table 8 below shows which dummies NHTSA uses to test child restraints based on the height or weight recommendations established for the restraint by the manufacturer. If a child restraint is recommended for a range of children whose weight or height overlaps, in whole or in part, two or more of the weight or height ranges in the table, the restraint is subject to testing with the

[132] NHTSA also recently adopted a three-year-old child side impact test dummy (Q3s) for use in side impact tests of add-on CRSs. Final rule adopting FMVSS No. 213a; 87 FR 39234, June 30, 2022, *supra.*

dummies specified for each of those ranges.

TABLE 8—CURRENT USE OF DUMMIES BASED ON MANUFACTURER'S RECOMMENDATION (S7)

| CRS recommended for use by children of these weights or heights— | Are compliance tested by NHTSA with these dummies (subparts refer to 49 CFR part 572) |
|---|---|
| Weight (W) ≤ 5 kg (11 lb); Height (H) ≤ 650 mm (25.5 inches) | Newborn (subpart K) |
| Weight 5 kg (11 lb) < W ≤ 10 kg (22 lb); Height 650 mm (25.5 inches) < H ≤ 850 mm (33.5 inches) | Newborn (subpart K), CRABI–12MO (subpart R) |
| Weight 10 kg (22 lb) < W ≤ 18.2 kg (40 lb); Height 850 mm (33.5 inches) < H ≤ 1100 mm (43.3 inches) | CRABI–12MO (subpart R), HIII–3YO (subpart P) |
| Weight 18kg (40 lb) < W ≤ 22.7 kg (50 lb); Height 1100 mm (43.3 inches) < H ≤ 1250 mm (49.2 inches) | HIII–6YO (subpart N) or H2–6YO (subpart I) (manufacturer's option) |
| Weight 22.7 kg (50 lb) < W ≤ 30 kg (65 lb); Height 1100 mm (43.3 inches) < H ≤ 1250 mm (49.2 inches) | HIII–6YO (subpart N) or H2–6YO (subpart I) (manufacturer's option), and weighted HIII–6YO (subpart S) |
| Weight greater than 30 kg (65 lb); Height greater than 1250 mm (49.2 inches) | HIII–10YO (subpart T)* |

* No HIC measured with HIII–10YO.

(**Note:** Add-on CRSs with internal harnesses that, together with a dummy, weigh more than 30 kg (65 lb), are not tested with the dummy while attached to the standard seat assembly using the child restraint anchorage system. Instead, they are attached to the standard seat assembly using the seat belt system.)

*b. Testing CRSs for Children Weighing 10–13.6 kg (22–30 lb)*

Currently under FMVSS No. 213, CRSs labeled for use by children in the weight range 10 kg to 18.2 kg (22 lb to 40 lb) per Table 8 are subject to testing with the CRABI–12MO and the HIII–3YO dummy (S7.1.2(c)). NHTSA proposed amending S7.1.2(c) by splitting the 10 to 18.2 kg (22 to 40 lb) weight range into a 10 to 13.6 kg (22 to 30 lb) and a 13.6 to 18.2 kg (30 to 40 lb) weight range per Table 13. We proposed that CRSs recommended for children in the 10 to 13.6 kg (22 to 30 lb) weight range would be tested with the CRABI–12MO, while CRSs for children in the 13.6 to 18.2 kg (30 to 40 lb) weight range would be tested with the HIII–3YO.[133] NHTSA proposed this change because, as a practical matter, 3-year-olds are generally too large to fit in a CRS recommended for children in the 22 to 30 lb weight range.

NHTSA discussed in the NPRM the anticipated effect that the amendment would have on infant carriers.[134] The current CRS market has infant carrier models recommended for children weighing up to 10 kg (22 lb), 13.6 kg (30 lb), 15.8 kg (35 lb), and 18.2 kg (40 lb) and with child height limits ranging from 736 mm (29 inches) to 889 mm (35 inches). The agency expects that manufacturers will reduce the maximum weight recommendations such that the restraints will be marketed for children up to 13.6 kg (30 lb), in part because it will be easier to certify CRS for children in this weight range with only the CRABI–12MO dummy than in the wider weight range which will require certification with multiple dummies. Further, NHTSA does not believe there will be market demand for infant carriers that are recommended for children weighing more than 13.6 kg (30 lb). Feedback from child passenger safety technicians involved in child restraint system checks indicates that infants usually outgrow infant carriers because of reaching the height limit of the carrier rather than the weight limit. Further, as an infant reaches a 13.6 kg (30 lb) weight, the weight of the infant and the infant carrier together becomes too heavy for a caregiver to easily pull out of the vehicle and carry around by a handle. Therefore, parents often switch to a convertible or all-in-one CRS as the child weight nears 13.6 kg (30 lb).

Commenters generally supported or did not oppose the proposal, but Consumer Reports and Evenflo raised issues that we address below.

Comments Received and Agency Response

Consumer Reports (CR) suggests that NHTSA should expressly prohibit infant carriers from being recommended for children weighing over 13.6 kg (30 lb), instead of limiting the maximum weight through the new dummy selection criteria for the HIII–3YO dummy. NHTSA does not believe there is a need for this approach. NHTSA believes that infant carrier manufacturers will relabel or redesign their products to adopt the maximum weight recommendation of 13.6 kg (30 lb), to avoid testing with the 3-year-old dummy.

With current infant carrier designs, the 3-year-old dummy's head is above the CRS shell; the dummy's head center of gravity (CG) will exceed the upper head excursion limits when tested. Current infant carriers would have to be redesigned to accommodate a 3-year-old's head height. An infant carrier redesigned to meet FMVSS No. 213 with the HIII–3YO dummy will likely have the utility and weight of a convertible CRS used in the rear-facing mode than the utility and weight of an infant carrier, which consumers may not find suitable for a carrier. We recognize that some manufacturers might choose to continue to produce infant carriers with

[133] As a practical matter, most CRS would be subject to testing using at least two dummies since most CRS are sold for children of weights spanning more than one weight category. A CRS that is recommended for a weight range that overlaps, in whole or in part, two or more of the weight ranges is subject to testing with the dummies specified for each of those ranges (571.213, S7).

[134] An infant carrier is a rear-facing CRS designed to be readily used in and outside of the vehicle. It has a carrying handle that enables caregivers to tote the child outside of the vehicle without removing the child from the CRS. Prior to this final rule, these infant carriers were subject to testing with the HIII–3YO (35 lb) dummy rear-facing under the provisions of S7. However, NHTSA has not tested infant carriers with the 3-year-old dummy because, among other matters, the dummy did not fit easily in infant carriers with its stature of 945 mm (37.2 inches). Since infant carriers are typically used with infants, and not with 3-years-olds, NHTSA decided to propose not using the 3YO dummy to test infant carriers.

a maximum weight recommendation over 13.6 kg (30 lb). If this were to happen, NHTSA will include these CRSs in the agency's compliance test program and will test them with the 3-year-old dummy as described in this final rule.

Comment and Response

CR opposed the proposal to remove the CRABI–12MO testing requirement for CRSs with a 13.6 kg (30 lb) to 18.2 kg (40 lb) capacity. The commenter is concerned about infant carriers that may be sold for children weighing over 30 lb. CR stated these infant seats ''are designed specifically for newborns and infants and should be tested to ensure that the injury metrics for the average-sized infant using those seats are within the appropriate injury thresholds.''

We believe CR has misunderstood the weight thresholds of the NPRM. As explained in the NPRM and in FMVSS No. 213's regulatory text, ''If a child restraint is recommended for a range of children whose weight overlaps, in whole or in part, two or more of the weight ranges in the table, the restraint is subject to testing with the dummies specified for each of those ranges.'' [135] Infant carriers with a 13.6 kg (30 lb) to 18.2 kg (40 lb) weight capacity also have weight recommendations below 13.6 kg (30 lb), usually starting at 1.8 kg (4 lb). Therefore, infant carriers that have an upper limit of 30 to 40 lb, and a lower weight limit below 30 lb, will always be tested with the CRABI–12MO dummy, in addition to being tested with the HIII–3YO under the NPRM and this final rule.

Comment and Response

CR recommends including a weighted CRABI–12MO to test for structural integrity. The commenter states that the weighted dummy changes the dynamics of the CRS and interaction with CR's testing using a simulated front seat back, often resulting in head contact of the dummy with the seat back ''even when height is within the allowable confines of the shell.'' CR states that many of the structural integrity issues it has seen have resulted at the upper limit of the CRS weight capacity.

In response, CR's suggestion to adopt a weighted CRABI–12MO is beyond the scope of the rulemaking. We note also that the FMVSS No. 213 standard sled assembly does not have a simulated front seat, so CR's experience with the weighted dummy's head contacting the front seat would not replicate the dynamics CR observed with a weighted CRABI–12MO, or necessarily demonstrate the ''structural integrity issues'' [136] the commenter said it found. We also note that CR did not provide information about the structural integrity issues it saw, or data on the extent to which head to front seat contact and loss of structural integrity are present in the field. We thus do not find a need for a weighted CRABI–12MO.

NHTSA believes infant carriers will most likely be relabeled or redesigned to have a maximum weight of 13.6 kg (30 lb). This final rule will eliminate the weight gap for testing the structural integrity of CRSs now in test protocols where infant carriers recommended up to 20.4 kg (45 lb) are only tested with the CRABI–12MO dummy. NHTSA will monitor the market and our test program results to explore if structural integrity issues arise or if there is a need for additional tests.

Comment and Response

Evenflo points out an incongruity between how we would test with the CRABI–12MO and the provision in the NPRM that CRSs may only be recommended for forward-facing use by children weighing at least 12 kg (26.5 lb). Evenflo requests that the agency clarify how the CRABI–12MO will be used in compliance testing if children represented by the dummy would not be turned forward-facing until 26.5 lb. NHTSA agrees with Evenflo on the need for clarification. We do not believe there is a need to test a forward-facing CRS with the CRABI–12MO (weighing 9.9 kg (22 lb)) because the dummy would be at least 2 kg (4.5 lb) less than the weight of children for whom the CRS in forward-facing mode is recommended. NHTSA is clarifying the regulatory text to make clear that the CRABI–12MO will not be used to test CRS in the forward-facing configuration for CRSs that can be used forward-facing.[137] However, to be clear, if a CRS can be used both forward-facing and rear-facing, the CRABI–12MO will be used to test the CRS in the rear-facing configuration. Further, this provision only applies to CRSs that are certified to this final rule's new turnaround weight requirement. These will be labeled with a turnaround weight of 12 kg (26.5 lb) or more.

NHTSA notes that this change has implications for the agency's use of the CRABI–12MO in FMVSS No. 213a (Side Impact Protection) compliance tests, *supra*.[138] NHTSA plans to issue an NPRM to propose a conforming amendment to FMVSS No. 213a that the CRABI–12MO would not be used forward-facing in the side impact test for CRSs labeled with a turnaround weight of 12 kg.

Height Specifications

This final rule also adopts proposed changes to the standard's height specifications for testing with the dummies so that height categories are consistent with the corresponding weight limits. This is to simplify the standard. Commenters did not oppose the proposal, so it is adopted as discussed in the NPRM.

First, this final rule adopts proposed S7.1.1(c) that specifies that the CRABI–12MO dummy is used to test a CRS recommended for children weighing 10 to 13.6 kg (22 to 30 lb) or children in a height range of 750 mm to not greater than 870 mm. A child weighing 13.6 kg (30 lb) on average is about 870 mm (34.3 inches) tall. If the CRS is recommended for children with heights over 870 mm, the CRS will be subject to testing with the appropriate larger sized dummy.

Second, currently S7.1.2(b) specifies that the newborn and CRABI–12MO dummies are used to test CRSs recommended for children in a height range from 650 mm to 850 mm. The average height of a 12MO child is 750 mm (29.5 inches). This rule reduces the 850 mm limit to 750 mm to correspond to the average height of a 12MO child (750 mm (29.5 inches)).

*c. Testing CRSs for Children Weighing 13.6–18.2 kg (30–40 lb)*

This final rule adopts the proposed amendments affecting CRSs labeled for use by children weighing from 13.6 kg to 18.2 kg (30 to 40 lb). Currently, these CRSs are subject to testing with the

[135] See 85 FR at 69429, col. 3. See FMVSS No. 213 S7: ''A child restraint that meets the criteria in two or more of the following paragraphs in S7 may be tested with any of the test dummies specified in those paragraphs.''

[136] FMVSS No. 213 S5.1.1 has integrity requirements that include no complete separation of any load bearing structural element and no partial separation that expose surfaces with a radius of less than ¼ inch or surfaces with protrusions greater than ⅜ inch above the immediate adjacent surrounding contactable surface of any structural element of the system. NHTSA interprets load bearing structure to mean a structure that: (1) transfers energy from the standard seat assembly to the CRS (*e.g.,* installation components or CRS areas that contact the standard seat assembly), or (2) transfers energy from the CRS to the occupant or vice versa (*e.g.,* belts and components to restrain the child, CRS surfaces or parts transferring energy to the occupant).

[137] Evenflo commented that until the 12-month-old dummy is no longer used to evaluate forward-facing CRSs, the $540,000 cost savings estimated in the NPRM likely will not be realized. We note that the cost savings in the NPRM were related to infant carrier tests with the 3-year-old dummy, which would still be actualized. Removing the CRABI–12–MO forward-facing tests would result in further cost savings.

[138] Final rule, 77 FR 39234.

CRABI–12MO and the HIII–3YO (S7.1.2(c)).[139] NHTSA determined that the CRSs do not need to be tested with the CRABI–12MO, since the 10 kg (22 lb) dummy is not representative of 13.6 to 18.2 kg (30 to 40 lb) children for whom the restraint is intended.[140] Commenters were supportive of the change. This final rule adopts a new S7.1.1(d) for the 13.6 to 18.2 kg (30 to 40 lb) range.

The new S7.1.1(d) specifies that NHTSA will test CRSs recommended for children in the weight range of 13.6 kg to 18.2 kg (30 to 40 lb) with the HIII–3YO dummy. Also, to make the height specification for testing with the dummy consistent with the corresponding weight limit, this final rule adopts the proposed provision that NHTSA will use the HIII–3YO dummy to test CRSs recommended for children in the height range of 870 mm to 1,100 mm (34.3 to 43.3 inches), amended from 850 mm to 1,100 mm (33.5 to 43.3 inches) per Table 13.

d. Testing CRSs for Children Weighing 18–29.5 kg (40–65 lb)—Use of the HIII–6YO Dummy

FMVSS No. 213 currently provides child restraint manufacturers the option of having NHTSA use the HIII–6YO or the H2–6YO in compliance tests of CRSs for children weighing 18 to 29.5 kg (40 to 65 lb) (S7.1.3). The NPRM proposed to remove the option and require that these CRSs be tested only with the HIII–6YO. The agency prefers the HIII–6YO as it is a more biofidelic test device than the H2–6YO, and also because it is becoming increasingly difficult to obtain replacement parts for the older H2–6YO dummy. CRS manufacturers are increasingly using the HIII rather than the H2–6YO dummy to certify their CRSs.[141]

NHTSA has been interested in using the HIII–6YO in FMVSS No. 213 for many years. We adopted the dummy in the standard in 2003 after determining that the dummy is ''considerably more biofidelic'' [142] than the H2–6YO dummy and able to measure impact responses no other child test dummy could measure, such as neck moments and chest deflection. However, while the dummy is successfully used in FMVSS No. 208 to measure compliance with low-risk deployment and static suppression tests of advanced air bags, problems arose in FMVSS No. 213 testing. In the demanding FMVSS No. 213 test environment where no air bag is present, the HIII–6YO exhibited unrealistic chin-to-chest and head-to-knee contact in tests of booster seats on the current standard seat assembly. The contact resulted in inordinately high, oftentimes failing HIC values recorded by the dummy.

NHTSA responded by adopting a provision permitting the optional use of the H2–6YO dummy in place of the HIII–6YO. NHTSA originally intended the optional use as a short-term measure but after extending the term several times, NHTSA issued a final rule in 2011 to permit optional use of the H2–6YO ''until further notice.'' The agency believed work was needed on the dummy to ameliorate the chin-to-chest and head-to-knee contact that was driving up the HIII–6YO HIC values.

As discussed in the NPRM preceding this final rule, the development of the proposed FMVSS No. 213 seat assembly adopted in this final rule changed the agency's plan. In developing the NPRM, NHTSA tested the HIII–6YO in booster seats and in CRSs with internal harnesses on the proposed standard seat assembly and found that the dummy did not exhibit the high head injury measures and high head acceleration spikes it showed on the current standard seat assembly. Chin-to-chest contact occurred at times, but it was a significantly softer contact than the contacts observed in tests on the current standard seat assembly and would therefore not invalidate the results of the test. On the proposed standard seat assembly, there were no high HIC values and high head acceleration spikes. NHTSA explained that this change is due to the firmer seat cushion on the proposed standard seat assembly that prevents the CRS from bottoming out against the seat frame. The NPRM provided data on dummy readings showing the peak head accelerations curves of the HIII–6YO in tests with the proposed standard seat assembly are lower in magnitude than in tests with the current standard seat assembly and exhibit no severe head acceleration spikes.[143]

We also proposed to use the HIII–6YO to improve our overall assessment of CRS performance in the FMVSS No. 213 test. The HIII–6YO dummy is more biofidelic than the H2–6YO dummy. The HIII–6YO has been shown to have good kinematics replicating that of a human in slow speed sled testing, exhibiting similar head and pelvis excursion as human children.[144] The agency believed the HIII–6YO would enhance the realism of the standard's frontal impact test in assessing CRS performance, particularly in regard to head injury.[145] While HIC and head excursion measurements were higher, NHTSA did not believe that testing with the HIII–6YO alone would significantly affect the manufacture of current child restraints. In our tests presented in the NPRM with the dummy, all the CRSs tested passed FMVSS No. 213's HIC and excursion limits with the dummy (except for the Evenflo Titan Elite which failed the head excursion limit).[146] Finally, NHTSA proposed to only use the HIII–6YO dummy because replacement parts for the H2–6YO dummy are becoming increasingly more difficult to procure. All test dummies need refurbishment and parts replacement from time to time. As the H2–6YO is not a state-of-the-art dummy, it has become more difficult for NHTSA to obtain replacement parts for the dummy. If parts are unavailable, the utility of the test dummy in NHTSA's compliance test program is significantly diminished.

Comments Received

Several commenters supported the mandatory use of the HIII–6YO dummy in compliance testing. The University of Michigan Transportation Research Institute (UMTRI) supported not further allowing the use of the H2–6YO to test CRSs in the compliance test, as did CR and SRN. The Automotive Safety Council (suppliers of safety systems to the auto industry) stated that the HIII–6YO dummy still has shortcomings, but use of the HIII–6YO in place of the H2 dummy ''is a welcome change as the HIII is a much better ATD in mimicking human movement.''

On the other hand, several manufacturers opposed the proposal. Graco, JPMA, Dorel and Evenflo

[139] The CRABI–12MO is not used to test a booster seat (S7.1.2(c)).

[140] However, if such a CRS were also labeled for use by children weighing less than 13.6 kg (30 lb), then the CRS is subject to testing with the CRABI–12MO.

[141] Information from manufacturers to NHTSA in 2014 showed that 43 percent of CRS manufacturers use the HIII–6YO to test their CRSs, 21 percent use the H2–6YO and 36 percent use both dummies for testing their various CRS models. Manufacturers using both the H2–6YO and HIII–6YO dummies test at least 50 percent of their models using the HIII–6YO dummy.

[142] 68 FR 37644.

[143] 85 FR at 69431–69434.

[144] Seacrist, T., et al., ''Kinematic Comparison of the Hybrid III and Q-Series Pediatric ATDs to Pediatric Volunteers in Low-Speed Frontal Crashes,'' 56th Annals of Advances in Automotive Medicine, October 2012.

[145] The HIII–6YO dummy yields a more accurate depiction of the restrained child's head excursion and would help better ensure CRSs are designed to prevent head impacts. The NPRM provided test data showing the HIII–6YO exhibits higher HICs and more head excursion than the older H2–6YO dummy in FMVSS No. 213 booster seat tests. Paired T-tests indicated that the measured differences in HIC and head excursion were significant (p-value <0.01).

[146] See Table 11 of NPRM (85 FR 69411).

commented that they believe chin-to-chest contacts have not been resolved. Graco said its testing showed chin-to-chest strikes had occurred in tests of belt-positioning seats ''that artificially increase the HIC scores.'' Graco argued this ''is not representative of a real-world injury mechanism; it is simply an artifact of the neck structure on this dummy.'' Graco, JPMA and Dorel referenced NHTSA's statements in the 2011 final rule that allowed the optional use of the H2–6YO dummy until further notice (76 FR 55826). We stated then that in tests of the dummy on the sled existing at that time: ''The HIII–6C dummy has a softer neck than the H2–6YO, which results in slightly greater head excursion results and larger HIC values (chin-to-chest contact) than the H2–6YO. This coupled with the stiff thorax of the HIII–6C dummy, accentuates the HIC values recorded by the dummy.'' Graco and Dorel argued it is premature to adopt the HIII–6YO dummy as the upgrades to the dummy discussed in the final rule have not yet been adopted. JPMA and Dorel stated that additional tests are needed to determine whether the proposed standard seat assembly has addressed the limitations of the dummy for all types of CRSs. Evenflo believes that more testing should be done of the HIII–6YO dummy on the proposed standard seat assembly without a tether. It suggests that until such testing confirms the HIII–6YO is appropriate for the seats that are currently on the market, manufacturers should be permitted to have NHTSA use the H2–6YO in compliance tests.

Graco presented data from repeat tests at Calspan with one belt-positioning seat using the HIII–6YO dummy and found, in its opinion, that slight child restraint and dummy pre-test setup variations allowed by the current TP–213 and the NHTSA's Research Test Procedure cause the head to swing forward and down into the chest plate, generating HIC scores ranging from mid-500s to over 1000. Graco provided the data shown in Table 9.

TABLE 9—GRACO'S RESULTS OF HIII–6YO BELT-POSITIONING SEAT TESTS ON ONE MODEL OF CRS

[Data provided by Graco]

| Installer | Sled accel [g] | Sled velocity [kph] | HIC | Chest resultant [g] | Knee excursion [mm] | Head excursion [mm] |
|---|---|---|---|---|---|---|
| 1 | 23.9 | 48.0 | 546 | 56.7 | 564 | 687 |
| 2 | 24.1 | 48.1 | 886 | 56.5 | 574 | 699 |
| 1 | 24.0 | 48.1 | 689 | 58.2 | 472 | 700 |
| 3 | 24.1 | 48.1 | 869 | 52.1 | 564 | 717 |
| 3 | 24.1 | 48.1 | 864 | 52.7 | 577 | 720 |
| 3 | 24.1 | 48.1 | 1020 | 53.7 | 582 | 731 |

Graco said the CV for HIC of this set of tests exceeded 20. Graco believed that ''any CV score greater than 10 is generally considered to be a high-variance measurement system in need of improvement.''

Dorel stated that it completed 80 internal research tests using the HIII–6YO dummy with the proposed standard seat assembly. Dorel said the 30 tests it conducted using a CRS with an internal harness showed no concerning performance issues. The remaining 50 tests were completed using the belt-positioning seat mode on 13 existing child restraint platforms (including 3-in-1 convertibles, combination belt-positioning seats and belt-positioning seats with and without backs). Dorel said that 28 of those 50 tests had instances of chin-to-chest contact that Dorel said contributed to elevated HIC scores. The commenter said all 28 of these instances occurred during testing of some 3-in-1, convertible or combination child restraint models. Dorel argued these types of child restraints were not well represented in the NPRM's belt-positioning seat test data.

Dorel also said it completed 28 follow-up tests using the same 3-in-1 convertibles and combination child restraints with the H2–6YO dummy and the proposed standard seat assembly, to assess whether these elevated HIC36 scores were related to the proposed standard seat assembly or to the HIII–6YO dummy, or a combination. Dorel said its data show that on average the HIC score of the HIII–6YO dummy is 575 points higher than the H2–6YO for the belt-positioning seat mode in certain 3-in-1 convertible child restraints, and that in certain combination CRS-belt-positioning seat modes, using the HIII–6YO dummy resulted in HIC scores 728 points higher than when the H2–6YO dummy was used.

JPMA and Evenflo stated that the HIII–6YO in an untethered configuration of harnessed CRSs is not well-represented in the test results in the NPRM. Evenflo noted that only three CRSs in this configuration were tested by NHTSA and that some of those CRSs are no longer in the market. Evenflo suggested more testing is necessary to ensure that CRSs which have been in the market for years, particularly larger, taller or all-in-one convertibles, will not be adversely impacted by use of the proposed standard seat assembly and HIII–6YO combination.

Evenflo, Graco, Dorel and JPMA recommended the continued option of testing with the H2–6YO dummy until testing confirms that the changes to the HIII–6YO would not negatively impact the current products, and the HIII–6YO dummy's bio-fidelity regarding chin-to-chest contact has been improved. Graco commented that, as an alternative, NHTSA should provide a methodology for evaluating chin-to-chest strikes to provide relief from HIC36 scores above 1000 that were caused by what the commenter characterized as a non-biofidelic artifact of the test dummy design.

Agency Response

This final rule ends the optional use of the H2–6YO child dummy and adopts the HIII–6YO dummy in FMVSS No. 213 as the sole 6YO child dummy on the compliance date indicated above. We disagree with the objections of the commenters to the HIII dummy's head-to-chest contact. The commenters refer to a statement from a 2011 final rule about the softer neck of the HIII dummy compared to the neck of the H2–6YO dummy, but the statement pertains to tests that were conducted on the current FMVSS No. 213 standard seat assembly. As explained in the NPRM, the current assembly in the standard has a very soft foam that bottoms out [147] against a rigid metal frame in some tests, which contributes to the severe chin-to-chest contact observed with some CRSs. This

[147] Bottoming out is when a foam lacks support (fully compressed) due to the amount of force being applied to it.

severe chin-to-chest contact has been just about eliminated by the stiffer, more representative foam in the updated standard seat assembly. The new foam will not collapse and bottom out like the current standard seat assembly and will reduce or eliminate the abrupt stop of the CRS and dummy at the time the foam is fully compressed, which helps minimize the chin-to-chest contact. While chin-to-chest contact was still observed, it did not result in severe chin-to-chest contact (spikes that are higher than the head acceleration peak before the chin-to-chest contact) that would significantly raise HIC values. While a soft chin-to-chest contact (spikes that are lower than the head acceleration peak before the chin-to-chest contact) might occur within the time of the HIC calculation and may introduce some variability to the HIC value, this contribution is not enough to be the cause of a failure.

Dorel pointed out that the HIII–6YO results in increased HIC values compared to the H2–6YO. The HIII–6YO dummy has a softer neck than the H2–6YO, which results in slightly greater head excursion results and larger HIC values (chin-to-chest contact) than the H2–6YO. The HIII–6YO has been suitable to evaluate many CRS designs in the current standard seat assembly and NHTSA's test data shows that it will continue to be suitable to evaluate CRSs in the updated standard seat assembly, as no severe chin-to-chest contact was found during NHTSA's testing with the updated standard seat assembly. While Graco presented data (see Table 9) where they found a test with severe chin-to-chest contact, NHTSA did not experience severe chin-to-chest contact in its testing. NHTSA believes this is feasible as most CRSs already have responses where they consistently do not show severe chin-to-chest contact when using the HIII–6YO in the current and updated standard seat assembly, although we recognize that some CRSs may need redesigning to meet the updated standard.

In addition, because replacement parts for the H2–6YO are no longer available, the agency (as well as laboratories and industry) eventually won't have the capability of testing with the H2–6YO, and therefore, won't be able to make the annual assessment to ensure the products in the market are compliant with FMVSS No. 213.

NHTSA believes it is time to move solely to the HIII–6YO dummy. We explained in the 2020 NPRM that using up-to-date seat foam on the proposed standard seat assembly would remove the test anomaly that had prevented NHTSA from unreservedly adopting the HIII–6YO into FMVSS No. 213 in the past. The new foam will not collapse and bottom out like the current standard seat assembly and will replicate the performance of the foams in current passenger vehicles. It should be noted that the bottoming out of the old foam happened only infrequently and was not happening to an extent that prevented certification to the HIC requirement. Manufacturers are currently certifying most CRSs to the requirement using the HIII–6YO dummy (using the current standard seat assembly with the softer cushion).[148] The CRSs do not have a problem meeting the standard with the HIII–6YO on the current seat with the soft foam. This is not surprising as NHTSA adopted the HIII–6YO dummy into FMVSS No. 213 twenty years ago (2003) and manufacturers have had since 2003 to optimize their designs to meet child protection requirements using the more advanced HIII–6YO child dummy. The new foam enables use of the advanced dummy in FMVSS No. 213 testing without having to change the dummy's design.

NHTSA believes it is time for *all* CRSs to be assessed with the more advanced HIII–6YO test dummy. The HIII–6YO is superior to the H2–6YO child dummy and provides a better assessment of the protective capabilities of a child restraint system than the H2 dummy. The HIII–6YO dummy is more biofidelic than the H2–6YO dummy. The HIII–6YO has been shown to have good kinematics replicating that of a human in slow speed sled testing, exhibiting similar head and pelvis excursion as human children.[149] Testing CRSs on the updated standard seat assembly in itself would yield dummy kinematics more representative of the kinematics of restrained children in real world frontal crashes than current tests, given the updated standard seat assembly is specially designed to represent a current vehicle rear seat. Having the HIII–6YO be a part of the test would amplify that realism and assessment. The HIII–6YO also has extended instrumentation capability in many areas over the H2 dummy, such as in the neck and chest. This capability will be advantageous in the event a need should arise to more thoroughly assess the risk of neck and chest injury to children in child restraints. The HIII–6YO has been used in FMVSS No. 208, ''Occupant crash protection,'' to assess the risk of head, neck and chest injury to out-of-position children by vehicle air bags for decades.

Using the HIII–6YO could particularly improve our assessment of CRS performance in the critical safety area of head injury. NASS–CDS data from 1995–2009 show that 39 percent of AIS 2+ injuries to restrained children in frontal crashes are to the head and face, with 59 percent of these injuries due to contact with the vehicle front seat and back support.[150] Mandatory use of the HIII–6YO in NHTSA's testing would boost efforts to address the head injury problem. The HIII–6YO dummy yields a more accurate depiction of the restrained child's head excursion in a crash and would help better ensure CRSs are designed to prevent head impacts in the real world. The softer, more biofidelic neck of the HIII provides a better assessment of a child restraint's performance in limiting head excursion than the H2. Design changes needed to meet the head excursion limit when tested with the HIII–6YO on the updated seat assembly would be warranted for child safety, as using the HIII–6YO better replicates the kinematics of an actual child than the H2–6YO.

NHTSA is concerned that the optional use of the H2–6YO may take advantage of the dummy's under-representation of head excursions. NHTSA believes there is a benefit in testing with the HIII–6YO now that the severe chin-to-chest contact has been addressed, as this dummy more accurately represents the head excursion levels of children. The lead time provided by this final rule will enable CRS designs to be optimized, as necessary, for performance on the updated FMVSS No. 213 standard seat assembly.

Evenflo and JPMA believe that in NHTSA's tests supporting the NPRM, CRSs tested without a tether were underrepresented and that more testing should be done to confirm CRS performance would not be negatively affected using the HIII–6YO dummy. Evenflo states that some of the CRSs tested in the NPRM are no longer in the market.

In response, NHTSA disagrees with Evenflo and JPMA about the representation of CRSs without tethers. The NPRM presented data of seven forward-facing CRS models tested in

[148] NPRM, 85 FR at 69434, col. 1–2.

[149] Seacrist, T., et al., ''Kinematic Comparison of the Hybrid III and Q-Series Pediatric ATDs to Pediatric Volunteers in Low-Speed Frontal Crashes,'' 56th Annals of Advances in Automotive Medicine, October 2012.

[150] In a study of 28 cases of children ages 0 to 15 who sustained AIS 2+ head or face injuries in a frontal crash, researchers found that the front row seat back and the B-pillar were the most commonly contacted components. Arbogast, K.B., S. Wozniak, Locey, C.M., Maltese, M.R., and Zonfrillo, M.R. (2012). Head impact contact points for restrained child occupants. *Traffic Injury Prevention,* 13(2):172–81.

different installation configurations, including five tested using the HIII–6YO and without a tether.[151] While some of these models are no longer in the market, that fact is not relevant to the issue at hand, which is that CRSs on the market today are capable of meeting the updated frontal standard with the HIII–6YO dummy and that is evidence that it is practicable. NHTSA's data for the NPRM show only one instance of a CRS not meeting the head excursion requirement, which suggests that some CRSs may need to be reconfigured to meet the updated standard. (The agency considers such a redesign as beneficial to safety, as reduced head excursion would reduce the risk that a child in the CRS would suffer a head injury in a crash.) NHTSA did further testing after the NPRM to evaluate the repeatability and reproducibility (R&R) of tests on the updated standard seat assembly (*supra*). This R&R testing involved testing CRSs multiple times at three different labs with different acceleration pulses. None of the testing showed that there was severe chin-to-chest contact that would contribute to a CRS's failure to meet FMVSS No. 213. In fact, all CRSs tested met the HIC36 requirement. These data indicate that ending the optional use of the H2–6YO dummy would not significantly affect the manufacture of current CRSs.

Graco and Dorel also argue that their tests still showed increased variability in their data due to chin-to-chest contact. Their data do not accord with the data we obtained from an extensive R&R program using three different labs. The agency's data indicate the updated standard seat assembly and test procedures show good repeatability (see section VI.d of this preamble). When analyzing for repeatability and reproducibility, it is difficult to parse out different possible factors that contribute to variability. Our R&R test series accounted for factors beyond the effect the standard's test procedure and/or standard seat assembly may have on test results. The test series also accounted for elements such as: (1) the variability the test pulse introduces (it is an independent variable that is not part of the system (standard seat assembly, test procedure)); and (2) the variability a CRS itself introduces, as there are some CRSs that are less stable[152] than others when positioned on the standard seat assembly and there are production variabilities among CRSs themselves that can affect the results. Even with those factors contributing to total variability, results from our study showed good R&R. NHTSA's R&R study provides confidence that this final rule's test is repeatable and reproducible with the HIII–6YO dummy. In contrast, it is unknown how closely Graco and Dorel followed the published NPRM test procedure, or which specific test variations were controlled in their testing. The commenters did not indicate (except for 1 test failure Graco pointed out) that the tested CRSs had HIC scores above the standard's performance thresholds or below, which is an issue that bears on the overall context and significance of the test results. Their data does not support a finding that using the HIII–6YO dummy would significantly affect the manufacture of current CRSs. However, to the extent the dummy drives design changes, these changes would be warranted for child safety, as the HIII–6YO replicates the kinematics of an actual child better than the H2–6YO.

Graco argued that its data show that the CV for HIC36 of this set of tests exceeded 20 noting that any CV score greater than 10 is generally considered to be a high-variance measurement system in need of improvement. As discussed in section VI.d. Repeatability and Reproducibility of Test Results, the assessment of repeatability based on CV values was established to assess dummy R&R in qualification tests of crash test dummies. It established CV values less than or equal to 10 percent as acceptable. However, we are applying the same analysis to a much more complex test. Our analysis showed that most of our tests had a CV value of less than 10 percent. On the tests where CV values were above 10 percent, it was usually because the HIC values were low (approximately under 500). Therefore, we believe values above 10 percent CV are acceptable. Those values must be put into context of the full results.

NHTSA also disagrees with Graco's suggestion that manufacturers should be provided an option for relief when a HIC36 score is above 1000 due to a chin-to-chest contact. First, chin-to-chest contact can occur in real-world crashes and it is important that child restraint systems control and mitigate the forces exerted on the child, even forces imparted by the child's head hitting against themselves. We are concerned that excluding HIC36 criteria under chin-to-chest contact scenarios may inadvertently encourage CRS designs with significant chin-to-chest contact. An allowance for manufacturers to ''exclude'' HIC36 evaluation when chin-to-chest contact occurs could also unnecessarily complicate NHTSA enforcement actions, in that a manufacturer may attribute any HIC over 1000 to chin-to-chest whether the failure was caused by such impact or not.

Finally, as explained in the NPRM, NHTSA has decided to move away from the H2–6YO dummy because replacement parts for the dummy are becoming increasingly more difficult for the agency to procure. Although NHTSA's crash test dummies are designed to be durable and capable of withstanding crash testing without unreasonably breaking, all test dummies need refurbishment and parts replacement from time to time. As the H2–6YO is not a state-of-the-art dummy, it has become more difficult for NHTSA to obtain replacement parts for the dummy. The agency is concerned that as parts become harder to obtain, NHTSA's inability to obtain parts will delay and impede its compliance test programs when it must but cannot use the H2 dummy. Ending the optional use of the H2–6YO dummy in compliance testing avoids that potential problem and ensures that NHTSA will be able to assess the compliance of CRSs using the HIII–6YO.

The agency has continued work to develop the Large Omnidirectional Child (LODC) dummy. This dummy represents a 10-year-old child and is designed with increased bio-fidelity, including a more segmented spine which results in a more biofidelic thoracic motion. However, this dummy is still under development and evaluation. Once a design of this dummy is finished, the agency plans on scaling down the 10-year-old LODC to a 6YO dummy. The agency will then assess the biofidelic capabilities of this future 6-year-old LODC against the HIII–6YO and H2–6YO dummies for potential use in FMVSS No. 213. This work may take several years. Adopting the HIII–6YO child dummy now in FMVSS No. 213 will immediately improve the assessment of crash protection for older children.

*e. Positioning the Legs of the HIII–3YO Dummy in CRSs Used Rear-Facing*

This final rule adopts the proposed dummy leg positioning procedure that calls for placing the dummy's legs up against the seat back and removing the test dummy's knee joint stops. The

[151] Additional tests of more models and installation configurations were done with other dummies as well.

[152] The Graco Affix has a very unstable base that causes shifting and difficulty in positioning it consistently. While we did not see any tests with high HIC36 caused by severe chin-to-chest contact, NHTSA observed higher variability in this CRS. If Graco's data are from this belt positioning booster seat, the movement of the CRS may have contributed to the variability of results.

procedure will facilitate NHTSA's compliance testing of child restraints that are recommended for use by children in the rear-facing configuration. NHTSA recommends that children 1- to 3-years-old ride rear-facing for as long as possible.[153] When testing with the 3YO dummy rear-facing, the dummy's legs oftentimes had to be crammed against the updated standard seat assembly's seat back, which NHTSA found problematic. The bracing interaction between the legs of the dummy and the seat back would change the pre-test set recline angle of the rear-facing CRS and the pre-test applied lap belt tension, meaning that it was difficult to keep the recline angle and lap belt tension within specifications in setting the conditions for the dynamic test. To address this problem, the NPRM proposed a dummy leg positioning procedure that calls for placing the dummy's legs up against the seat back and removing the test dummy's knee joint stops to allow the leg to extend at the knee in the test.

Currently, FMVSS No. 213 specifies use of the HIII–3YO child dummy to test CRSs used rear-facing recommended for use by children in the 10 kg to 18.2 kg (22 to 40 lb) weight range. This final rule amends this threshold such that the HIII–3YO child dummy is used only for testing CRSs recommended for children with weights in the 30 to 40 lb range, regardless if the CRS is in the forward-facing or rear-facing mode. Notwithstanding this change, the dummy leg positioning procedure continues to be relevant so that the standard is clear about how NHTSA positions the dummy's legs when the CRSs are rear facing. Without the procedure there will be uncertainty about this part of the test, with some testers possibly cramming the dummy's legs against the updated standard seat assembly's seat back.

The leg positioning procedure is based on data analyzing toddler lower extremity postures when seated in CRSs rear-facing. NHTSA initiated a research project conducted by the University of Michigan Transportation Research Institute (UMTRI) to identify toddlers' common lower extremity postures.[154] UMTRI evaluated 29 subjects ages 18- to 36-months in two CRS conditions (wide and narrow seat) used rear-facing.[155] UMTRI took anthropometry measures, surface scans and coordinate measures to evaluate the toddler seating postures. UMTRI found that the most common seating postures for toddlers in rear-facing restraints are with the child's legs bent and ''relaxed'' with the bottom part of the feet up against the seat back, and with the child's legs spread and ''feet flat against each other.'' These seating positions are not achievable by the HIII–3YO dummy due to the dummy's limited hip range of motion. However, the children also frequently sat with their legs bent and elevated against the vehicle seat back. The HIII–3YO's legs are able to achieve this bent and elevated position. Accordingly, NHTSA proposed to position the HIII–3YO's legs bent and elevated in CRSs used rear-facing as shown by many of the children in the UMTRI study. The procedure is already used by some commercial test labs and CRS manufacturers to test CRSs used rear-facing for older children.

As discussed in the NPRM, as part of the study, UMTRI conducted sled tests to compare the proposed positioning protocol to those used by Transport Canada, various commercial test labs, and CRS manufacturers. The study found no differences in CRS performance using the various procedures.[156] NHTSA found also that removing the HIII–3YO knee joint and bending the legs at the knee were easy to do in the lab and added little time to the testing process, unlike some of the other procedures which were more laborious.

Comments Received

Consumer Reports (CR), Volvo, Britax, JPMA and Evenflo commented on this proposal, with CR and Volvo supportive and the other three unsupportive. CR supported the removal of the knee stops for testing with the HIII–3YO in rear-facing child restraints, noting they too remove the knee stops and extend the legs against the back of the seat. CR stated that the dummy's feet are not braced against the seat back and that they found no issues with this methodology.[157] Volvo supported the modification of the knee joints of the dummy, stating that this procedure will accommodate the use of the dummy in rearward-facing CRS when the child restraint system is placed close to the seat back.

Britax did not support the procedure because the commenter did not view a dummy with the knee stops removed as biofidelic. Britax stated that the reports cited in the NPRM supporting this procedure seemed only to analyze repeatability and reproducibility of the summary metrics and did not discuss how test dummy kinematics were affected by the lower leg behavior. Britax stated the knee stop condition may, in some current or future CRS designs, produce dummy-to-dummy or dummy-to-CRS contact, and that it may be appropriate to have a procedure to identify and discount such contact, such as, the commenter said, Canada Motor Vehicle Safety Standard No. 213, section 215(1)(d). This paragraph of CMVSS No. 213 excludes the head acceleration limit for any acceleration caused by another part of the dummy striking its head. Britax said that NHTSA should further investigate and understand how factors such as lateral distance between the feet or dummy footwear can be controlled to help provide a repeatable test method.

Evenflo recommended against the proposed procedure because, it was concerned that the bending of the legs and removal of knee joints do not comport with actual child positioning in a CRS. Evenflo preferred a test method using more natural leg positioning, with limits in the standard relating to interactions between the lower legs and parts of the CRS. Evenflo believed that NHTSA and Transport Canada should develop and use a single test method, as Evenflo believes that Transport Canada's ''removal of dummy leg parts and unnatural positioning create a similar lack of biofidelic integrity.'' JPMA expressed its belief that NHTSA should specify how injuries that result from contact between various parts of a dummy are evaluated. JPMA also recommended specification of a time window in which injuries and other metrics are evaluated.

Agency Response

NHTSA proposed the dummy leg positioning procedure to enable the use of the dummy in FMVSS No. 213's dynamic test. The dummy is the best available anthropomorphic test device that is representative of children in the 30 to 40 lb range for whom the child restraint is intended. There is a safety need to use the dummy to assess the performance of CRSs in protecting this child occupant group. We realize that removing the knee joint stops results in non-biofidelic knee set-up, but FMVSS No. 213 is not evaluating leg injuries

[153] *https://www.nhtsa.gov/equipment/car-seats-and-booster-seats#find-the-right-car-seat-car-seat-recommendations.*

[154] ''Toddler Lower Extremity Posture in Child Restraint Systems,'' March 2015, UMTRI–2014–8.

[155] UMTRI also identified the children's common lower extremity postures in forward-facing seats (long and short cushion). *Id.*

[156] ''Assessment of ATD Selection and Use for Dynamic Testing of Rear Facing Restraint Systems Designed for Larger Toddlers.'' UMTRI–2014–12. March 2015.

[157] CR noted, however, that the leg position might prove more challenging when testing higher-weight-capacity infant carriers (recommended for children greater than 13.6 kg (30 pounds)), and rear-facing convertibles that are installed flush against the seat back.

and so the knees do not need to be biofidelic. If the legs do contact the dummy as the legs are swung back towards the dummy's head, this contact is inconsequential as the contact is soft (not injurious and without a significant spike in the acceleration trace) and the interaction happens after HIC36 and chest acceleration are measured. We note that our testing did not show notable differences in the different dummy setups on test results.[158] Testing with an unaltered HIII–3YO dummy is not an option as the bracing interaction between the legs of the dummy and the seat usually changes the pre-test set recline angle of the CRS used rear-facing and the pre-test applied lap belt tension. This bracing interaction makes it difficult for the test set up to remain in spec when running the compliance test.

NHTSA will adopt the proposed positioning procedure because the procedure will facilitate compliance testing of the CRSs to the requirements of FMVSS No. 213. The procedure involves removing the dummy's knee joint stops to allow the leg to bend freely at the knee. Removing the knee joint stops results in a seating posture that toddlers adopt in real life. While the legs might sometimes swing back in a non-biofidelic manner, any contact of the legs with the head or torso of the dummy does not affect the injury measures evaluated in FMVSS No. 213. The benefits of testing CRSs rear-facing for older children with the dummy outweighs the unconventional appearance of the knee joints.

Britax and JPMA suggest that NHTSA adopt a procedure to identify and discount leg to head contact. We do not agree with Britax's suggestion to adopt the provision in CMVSS No. 213 215(1)(d), because the foot to head contact experienced in rear-facing tests with the HIII–3YO dummy is very soft and should not prevent HIC36 from being evaluated. NHTSA also believes it would be very difficult to establish objective means to identify and discount the effect the foot contacting the head has on HIC36.

Evenflo commented that having CMVSS and FMVSS harmonized would help the industry lower costs. The U.S. and Canada have historically recognized the benefit of regulatory collaboration in connection with motor vehicle safety, and NHTSA collaborates closely with Transport Canada while developing changes to FMVSS No. 213. As discussed in the NPRM, NHTSA reviewed the provisions in CMVSS No. 213 on this issue and conducted tests using Transport Canada's procedure on testing with the dummy. On this matter, the agency has decided that positioning the HIII–3YO's legs as described in this final rule is the most appropriate approach for FMVSS No. 213.

*f. Test Procedure Issues Raised by Commenters*

Tensioning Procedures for Seat Belts, Lower Anchor Webbing and Tethers

Evenflo comments that Section 12.D.6.3 of TP–213–10 specifies using a belt-tension gauge to measure seat belt tension, and then to use a load cell to take the final measurement. It states that the test labs do not use a load cell and that the belt tension gauge often cannot be used on LATCH belts because there is not enough space to fit the gauge. Accordingly, the commenter recommends that a load cell be incorporated into the LATCH anchors at a minimum. It notes that for the other installations, a typical belt load cell is acceptable, but NHTSA should specify the model of load cell to be used to ensure consistency among the testing labs.

Graco states that proposed S6.1.2(d)(1)(ii) merely specifies the range of acceptable tension values and directs that a load cell be used without noting a location for the measurement. Graco believes the tether routing on the proposed standard seat assembly does not reflect actual vehicle geometry and materials, particularly the routing of the tether across a steel box beam at the top of the seat back before turning the strap more than 90 degrees to the anchor location, which, Graco states, effectively creates two segments of the tether strap. Graco recommends capturing pre-test tether tension values at the approximate midpoint of the section of the tether between the top of the seat back structure and the ''Tether Anchor Assembly.'' It states that using this location has proven to result in more consistent readings. Graco also believes that taking the measurement closer to either end of this span results in higher tension values. It further recommends that the appropriate zone in which to place the load cell should be specified in S6.1.2(d). The commenter is concerned that the tether tension may be different between the child restraint seat back and the top of the proposed standard seat assembly, compared to the tension in the segment between the top of the seat back and the tether anchor. It explains that this in turn may result in pre-test under- or overtightening of the tether, which can then lead to inconsistent results for otherwise like-to-like tests. It asks if NHTSA has a study or evidence that the tension in the tether strap between the child restraint seat back and the top of the proposed standard seat assembly is the same as the tension in the segment between the top of the seat back and the tether anchor.

Graco adds that given that the text of S6.1.2(d)(1)(ii) is changing to remove references to certain harness systems, an option should be provided to use a means other than a load cell to capture pre-test belt and tether tension. The commenter states that this would conform S6.1.2(d)(1)(ii) with S6.1.2(d)(1)(iii), which states that, when attaching a child restraint system to the tether anchorage and the lower anchors of the child restraint anchorage system on the standard seat assembly, NHTSA tightens all belt systems used to attach the restraint to the standard seat assembly to a tension of not less than 53.5 N and not more than 67 N, as measured by a load cell or other suitable means used on the webbing portion of the belt. The commenter notes that this suggested change also aligns with Section 12.D.1.2(3) of TP–213–10, which states that seat belt webbing load cells monitor belt preload during CRS installation. Graco adds that this item is not required if an equivalent belt tension measurement device is utilized to determine the preload on the Type 1 and Type 2 seat belt assembly.

Britax commented that when a CRS is installed to the child restraint anchorage system on the standard seat assembly, the current rule specifies that the CRS belt systems are to be adjusted to a tension of 53.5 to 67 N as measured on the webbing portion of the CRS belt. However, Britax states that this procedure does not provide specific guidance for installing a CRS equipped with a rigid lower anchor attachment, which has no webbing. Britax requested the NHTSA consider further guidance in the installation procedure for CRSs with rigid lower anchor attachments.

Agency Response

In general, NHTSA agrees with describing the location and instrumentation for the belt tension measurements but believes that this level of detail would be more appropriate for inclusion in a document such as the OVSC Compliance Test Procedure, which, as previously stated, is a guidance document, and not a rule or regulation. NHTSA will consider adding this information into the updated Compliance Test Procedure as guidance. The advantage of including the information in the Compliance Test

[158] ''Assessment of ATD Selection and Use for Dynamic Testing of Rear-facing Restraint Systems Designed for Larger Toddlers.'' UMTRI–2014–12. March 2015. Docket No. NHTSA–2020–0093–0008 at *www.regulations.gov*.

Procedure is that the guidance can be tailored to specific designs of CRS, and the Compliance Test Procedure is also nimbler in terms of updating. The proposed changes did not include the phrase ''as measured by a load cell'' because the agency wants to give flexibility on how the measurement will be made. While the three-pronged tension gauge is being used now, a better method may arise in the future, and the device can be updated in the Compliance Test Procedure at that time.

Evenflo suggests incorporating a load cell into the LATCH anchors to measure the tension when the three-pronged tension gauge cannot be used with the webbing. (The three-prong tension gauge attaches to free webbing.) NHTSA declines to incorporate the suggested method. Although NHTSA has used load cells in the LATCH anchors in the past, those load cells were used for a different purpose and were rated for much higher loads. Also, NHTSA does not know what variability different load cell models would introduce into the system.

Rather than using a load cell or the three-prong tension gauge, NHTSA is considering a different approach. NHTSA describes in its Research Test Procedure a method it has used to ensure tightness of a CRS to consistent levels when there is insufficient free webbing on which to use the three-prong tension gauge. The method consists of tightening the CRS so that it does not move more than 25 mm (1 inch) in either fore/aft or lateral directions. NHTSA conducted a series of tests with two CRS models comparing the three-pronged gauge to measure the webbing tension and the 1-inch tightness method. Results showed that the two methods had comparable, as well as repeatable, results (Table 10 and Table 11).

NHTSA believes that the 1-inch tightness method is appropriate for installing CRSs when the tension cannot be measured due to a lack of free webbing. NHTSA will consider incorporating this method into its Compliance Test Procedure. In addition, the agency is considering incorporating this alternative tightness method into the regulatory text of FMVSS No. 213 and No. 213b. NHTSA plans to propose incorporating the method in the upcoming NPRM.

TABLE 10—COMPARISON OF TEST RESULTS FOR TWO TIGHTENING METHODS—USING HIII–6YO IN A FORWARD-FACING BRITAX MARATHON CLICKTIGHT AND LOWER ANCHOR INSTALLATION

| Test method | Test No. | HIC36 | Chest acceleration (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|
| Calspan 3 Prong Tension Gauge Method | RR06–19–38 | 652 | 40.6 | 775 | 859 |
| | RR02–20–01 | 708 | 40.8 | 828 | 880 |
| | RR02–20–02 | 741 | 44.4 | 801 | 869 |
| | St. Dev | 45.4 | 2.1 | 26.6 | 10.5 |
| | Average | 700.3 | 41.9 | 801.2 | 869.4 |
| | CV% | 6.5 | 5.1 | 3.3 | 1.2 |
| Calspan 1-inch Tightness Method | RR06–20–35* | 671 | 43.1 | 773 | 834 |
| | RR06–20–36* | 595 | 41.7 | 794 | 846 |
| | RR06–20–37* | 708 | 44.0 | 794 | 851 |
| | St. Dev | 57.4 | 1.1 | 11.8 | 9.1 |
| | Average | 658.1 | 42.9 | 787.1 | 843.7 |
| | CV% | 8.7 | 2.7 | 1.5 | 1.1 |
| All | St. Dev | 51.7 | 1.6 | 20.0 | 16.6 |
| | Average | 679.2 | 42.4 | 794.2 | 856.6 |
| | CV% | 7.6 | 3.8 | 2.5 | 1.9 |

TABLE 11—COMPARISON OF TEST RESULTS FOR TWO TENSIONING METHODS—USING CRABI–12MO IN A CHICCO KEYFIT INFANT CRS AND LOWER ANCHOR INSTALLATION

| Test method | Test No. | HIC36 | Chest acceleration (g) | RF angle |
|---|---|---|---|---|
| Calspan 3-Prong Tension Gauge Method | RR06–19–34 | 380 | 43.9 | 52 |
| | RR06–20–27 | 347 | 43.9 | 50 |
| | RR06–20–28 | 378 | 44.4 | 50 |
| | St. Dev | 18.7 | 0.3 | 1.2 |
| | Average | 368.1 | 44.1 | 51.0 |
| | CV% | 5.1 | 0.7 | 2.3 |
| Calspan 1-inch Tightness Method | RR06–20–29* | 391 | 41.6 | 51 |
| | RR06–20–30* | 362 | 43.0 | 50 |
| | RR06–20–31* | 386 | 43.8 | 51 |
| | St. Dev | 15.2 | 1.1 | 0.5 |
| | Average | 379.7 | 42.8 | 51.1 |
| | CV% | 4.0 | 2.7 | 1.1 |
| All | St. Dev | 16.5 | 1.0 | 0.8 |
| | Average | 373.9 | 43.4 | 51.0 |
| | CV% | 4.4 | 2.4 | 1.6 |

For tether tension, NHTSA installed some CRSs and found cases where the tether tension can be measured consistently on both the area between the CRS and the tether webbing bend to the back of the updated standard seat

assembly and between the tether anchorage and the top of the updated standard seat assembly. We also found some models that prevent measuring the tether tension between the CRS and the tether webbing bend to the back of the updated standard seat assembly when the tether is coming from a location lower on the CRS (lower in comparison with other models), and then wrapping around the top of the updated standard seat assembly. In view of these findings, NHTSA will consider including measurement locations in its Compliance Test Procedure. In describing measurement locations, NHTSA will seek to balance the need for flexibility in where the measurement is taken with the desire to provide guidance to NHTSA test laboratories.

In response to Britax's request for guidance on installing CRSs with rigid lower anchorage attachments that have no webbing, NHTSA reviewed the ECE R129 test procedure to evaluate whether updates to the FMVSS No. 213 test procedure are warranted and whether NHTSA should use the ECE R129 test procedure. The ECE R129 test procedure states that a force of 135 ± 15 N shall be applied in a plane parallel to the surface of the standard seat assembly seat cushion. ECE R129 also specifies that the force shall be applied along the center line of the CRS and at a height of no more than 100 mm (3.93 inches) above the standard seat assembly seat cushion. ECE R129 does not specify what instrumentation and what size plate is used to apply the force on the front of the CRS while installing it.

NHTSA conducted three installations of two CRS models with rigid lower anchor attachments (Clek Ozzi and Maxi Cosi Rodifix) generally following the ECE R129 procedure. We used two different methods for applying the force (2 x 2 inches square plate (''small plate'') and 10 x 2 inches metal rectangle plate on force gauge ''large plate'') to apply the forces in a repeatable and reproducible manner. As noted above, ECE R129 does not have specifications for this aspect of the procedure.

The study indicated that the ECE R129 test procedure does not appear necessary or appropriate for FMVSS No. 213. NHTSA found that the CRSs attached to the lower anchors of the child restraint anchorage system with a force much lower than the 135 N force indicated in ECE R129, which appears to show an absence of a need for a maximum force specification. The agency is also concerned that applying a force such as the one in ECE R129 may result in an installation that positions the CRS too far into the seat back of the standard seat assembly when a retractable rigid attachment is used. In addition, the difference between the maximum forces between the two different models varied more than 20 N, which suggests that each CRS model may have different maximum installation forces based on design (see Table 12).

TABLE 12—FORCE MEASUREMENTS DURING RIGID LOWER ANCHORAGE ATTACHMENT INSTALLATIONS ON THE FMVSS NO. 213 STANDARD SEAT ASSEMBLY

| Test No. | Clek ozzi | | Maxi cosi rodifix | |
|---|---|---|---|---|
| | Small plate | Large plate | Small plate | Large plate |
| 1 | 30.6 N | 30.2 N | 54 N | 47.6 N |
| 2 | 32.0 N | 29.2 N | 54.6 N | 45 N |
| 3 | 30.6 N | 30.4 N | 51.2 N | 49.2 N |

Because of these design differences, the installation of CRSs with rigid lower anchorage attachments may vary markedly from model to model. Some CRSs not only have rigid lower anchorage attachments but have retracting or foldable rigid lower anchor attachments that may require different installation steps. Currently, NHTSA attaches CRSs to the lower anchors following the manufacturer's instructions, as some installations may not only require a force to engage the attachments but also to retract the rigid attachment until the CRS is in the recommended position. The advantage of following the manufacturers' instructions in this situation is the design flexibility provided by this approach. As long as the CRS with rigid lower anchor attachments meets all applicable requirements of FMVSS No. 213 and No. 213b (including S5.9(a) and S5.9(d)), manufacturers may use different designs for the rigid attachments. This approach of following the manufacturer's instructions about attaching a CRSs with rigid lower anchor attachments to the lower anchors is working, so NHTSA does not see a need to change this aspect of FMVSS No. 213 and No. 213b.

Evenflo commented that the dynamic test procedure does not currently provide sufficient direction regarding the order of operations for attaching and tensioning the tether strap, lower LATCH anchors, and the vehicle belts. It argues that not having the order specified introduces inconsistency into the test procedures used by individual labs. It notes that it is very possible to have different outcomes simply because the lab is, for example, completely tensioning the tether before the auto belts or vice versa. Evenflo requests NHTSA to address this ordering of operation in the final rule.

In response, NHTSA disagrees that the order of operations to tension the belts should be specified in the standard. As each CRS is different, it is sometimes necessary for NHTSA to recheck the tensions to ensure they have not changed due to other steps in the procedure (*e.g.,* restraining the dummy in the CRS). NHTSA is evaluating the merits of including a step in the NHTSA Compliance Test Procedure to re-check webbing tensions after dummy installation.

Harness Tension

Several commenters had recommendations about the procedure NHTSA should use for measuring the tension of the internal harness system when preparing a child restraint for testing. Evenflo notes that section 12.D.6.3 of TP–213–10 refers to using a webbing tension pull device placed under each shoulder of the dummy and a waist strap to apply a 9 N force to create a 7 mm (0.27 inch) gap (which correspond to S6.1.2(d)(1–3) in current FMVSS No. 213). Evenflo states this is a challenging, nearly impossible, procedure to execute correctly due to factors such as the presence of shoulder harness or waist harness covers and blockage created by the headrest. The commenter states that, because of this difficulty, testing labs are instead using a variety of alternative approaches, including a 2-finger method, a pinch test, or a 3-prong belt-tensioning gauge inserted on each shoulder strap between the chest clip and crotch buckle. Evenflo recommends that the belt-

tensioning gauge method be added to TP–213 because it is measurable and can be used consistently on any CRSs with any dummy. Evenflo adds that at least one lab targets 4 pounds on the gauge and Evenflo recommends this as well. Graco recommends that NHTSA adopt the pre-test harness tension method using a 3-prong gauge similar to that used by described in VRTC's Research Test Procedure. Graco states it conducted a comparative study using the webbing tension pull device shown in FMVSS No. 213 and a 3-prong gauge like that used by VRTC. The commenter states that test data show use of the 3-prong gauge reduced the CV of head and chest acceleration measures when compared to the current webbing tension pull device. Graco states that the 3-prong gauge is also easier to use when measuring harness tensions.

Agency Response

The current harness tension provision in FMVSS No. 213's test procedures states that if appropriate, shoulder and pelvic belts that directly restrain the dummy shall be adjusted as follows: Tighten the belts until a 9 N force applied (as illustrated in figure 5) to the webbing at the top of each dummy shoulder and to the pelvic webbing 50 mm on either side of the torso midsagittal plane pulls the webbing 7 mm from the dummy. (S6.1.2(d)(1)(i))

During the research conducted for both the update to FMVSS No. 213 and establishment of FMVSS No. 213a, NHTSA used the 3-pronged gauge method to measure tensions in the CRS internal harnesses and found the method practicable and repeatable throughout its testing. NHTSA will consider incorporating the 3-pronged gauge method into NHTSA's Compliance Test Procedure. NHTSA also believes that the specification of the instrumentation should be made in the Compliance Test Procedure rather than in the regulatory text, as the Compliance Test Procedure can be updated quickly and easily to effectuate any needed change in procedure.

In this final rule, NHTSA is specifying the internal harness tension as ''not less than 9 N but not more than 18 N,'' which is consistent with FMVSS No. 213a.[159] NHTSA is adopting this amendment because the current regulatory text (''Tighten the belts until a 9 N force applied . . . pulls the webbing 7 mm from the dummy'') is cumbersome and unnecessary. An upper limit of 18 N, similar to that in FMVSS No. 213a, better ensures consistency in testing. Having a tension range is clearer for the standard and also follows the range format of other tensions specified in the standard.

Correction of TP Figure

Evenflo notes that on Figure 6 on page 34 of the current TP–213–10 is inaccurate because it does not depict the standard's requirements correctly. NHTSA agrees and has corrected the figure. S5.2.1.1(b) relates to the width of a CRS seat back and provides that for some CRSs, the width may be a specified dimension if the CRS has side supports (side wings) ''extending at least 4 inches forward from the padded surface of the portion of the restraint system provided for support of the child's head.'' The side wing depth dimension should be measured from the foremost point of the side wing to the level of the seat back. However, the figure shows the measurement taken at the head center of gravity (CG) plane (see figure below).

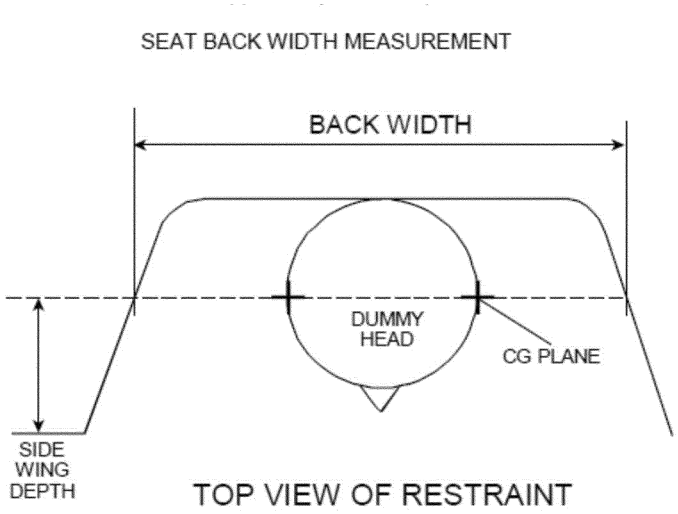



**Figure 4. Seat Back Width Measurement (Incorrect Former Figure 6 in TP-213-10)**

Although this comment pertains to a figure in the Compliance Test Procedure that was not a direct subject of this rulemaking, the figure is incorrect and can confuse readers. The agency has taken this opportunity to correct the figure as a housekeeping measure. The corrected figure will be included in the next version of the Compliance Test Procedure to show the correct measurement. See corrected figure below.

[159] In the 2022 final rule establishing FMVSS No. 213a, NHTSA explained that an upper limit for tensioning internal harnesses was specified to have consistency in testing. For the same reason, NHTSA has included an upper limit to this internal harness tension.

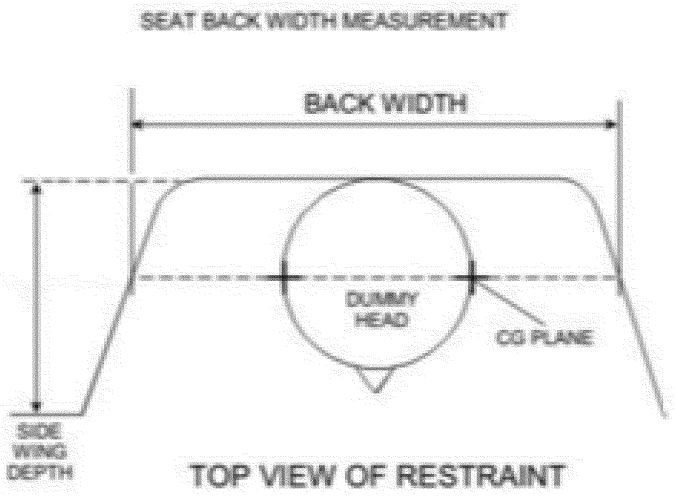



**Figure 5. Seat Back Width Measurement Corrected Figure 6 (Test Procedure)**

Weighted 6-Year-Old Dummy and Lap Shield

Dorel requests NHTSA to clarify the setup of the weighted HIII–6YO dummy in a forward-facing installation (Section 3.3.1 of the TP) and a belt-positioning booster installation (Section 3.3.2). Dorel asks whether these sections were meant to apply not only to the HIII–6YO dummy but also to the weighted HIII–6YO dummy, particularly in terms of using a lap shield. Dorel points out that currently, there is nothing in the standard or TP 213–10 that describes the installation of the lap shield onto the weighted HIII–6YO dummy when used in the belt-positioning seat mode, even though the lap shield is used with the unweighted version of the dummy.

NHTSA agrees with Dorel that the lap shield should be used with the weighted HIII–6YO. There is a gap between the pelvis and abdomen on the HIII–6YO that a lap belt can get wedged into in a compliance test. The lap shield is used to cover that gap. The lap shield should be used with the weighted HIII–6YO dummy because outwardly the dummy is the same as the unweighted HIII dummy and has the same gap. The lap shield is needed to help ensure the lap belt of the Type 2 belt on the updated standard seat assembly does not wedge into the gap in a compliance test. This final rule will adopt changes to include the use of the lap shield when using the weighted HIII–6YO dummy. The Compliance Test Procedure will also be updated accordingly.

Installation Procedure for CRSs With Unused Support Legs

JPMA, Evenflo and Britax state that NHTSA should specify how unused support legs should be adjusted or positioned during compliance testing to further aid consistency efforts.

In response, NHTSA may not be able to provide a general specification as to how it will position an unused support leg as positioning the leg would depend on the design of the CRS itself. In any event, NHTSA does not see a need to specify how it will position an unused support leg. CRSs with support legs typically have a foldable leg with or without a storage compartment. CRSs with support legs provide instructions in their manuals on using the CRS without the support leg, as sometimes the support leg might cause the CRS to be angled (lifted) when the support leg is not compatible with the vehicle. NHTSA reviewed 13 [160] instructions of CRS models with support legs and all of them provide instruction for ''folding the support leg'' if the support leg cannot be used. For this reason, NHTSA anticipates it will test these CRSs without the support leg by following the instructions of the CRS manufacturer's printed instructions for storing the leg. NHTSA encourages manufacturers to include as much detail in their instructions necessary for a proper installation of the CRS without the support leg.

Chest Clip Location

Graco suggests NHTSA adopt specifications that focus on the location of the chest clip (sometimes referred to as a ''retainer clip''). The commenter states that most, if not all, manufacturers follow the practice of directing caregivers to install the chest clip at armpit level and that this is also the direction provided in the 2020 National Child Passenger Safety Technician Guide. Graco adds that some manufacturers even indicate on their chest clips where the clip should be aligned. Graco states that it typically measures the chest clip location and has found that variation in chest clip placement up or down the torso may have a correlation with injury and excursion values in some circumstances. It also notes that for a crash test dummy the ''armpit'' is not as well defined as on an infant or toddler, which, Graco states, creates some ambiguity and room for interpretation. Graco recommends that a method be established to ensure greater precision of the chest clip placement.

NHTSA disagrees that more details on positioning the chest clip are needed. NHTSA follows the manufacturer's instructions to position the chest clip, when a chest clip is provided. The instructions usually state ''to position the chest clip at arm pit level.'' This is the instruction caregivers follow to use the CRS, so NHTSA's following the instruction replicates a real-world condition. We believe the CRS's performance should be assessed when installed in a reasonable manner, including a range of chest clip positions that a caregiver could reasonably understand to be the ''arm pit'' level. If CRS manufacturers provide, in their instruction manuals, more details on where to place the chest clip, NHTSA will follow these instructions.

[160] Mico XP Max (Maxi Cosi), Pipa Lite (Nuna), PIPA (Nuna), Pipa Lite R (Nuna), Pipa Lite RX (Nuna), Primo Viaggio 435 Nido (Peg Perego), Primo Viaggio 435 Lounge (Peg Perego), SafeMax (Evenflo), Aton 2 (Cybex), Aton M (Cybex), Cloud Q (Cybex), Bugaboo Turtle (Nuna) and Bugaboo Turtle One (Nuna).

Commenters did not provide data on how the chest clip placement variation affects injury measures. While this clip placement may introduce variation in injury assessment reference value results, CRS manufacturers should ensure that their CRSs meet the standard when positioned in any area that a caregiver may reasonably interpret as ''arm pit level.''

Photographs and Camera Angles

Graco commented that ''Pre-test photographs provide a crucial analytical tool for diagnosing a child restraint's performance, especially when reviewing anomalous test results.'' Graco states that pre-test photographs ''can be used to assess the initial angle of the [CRS], the angle and placement of the vehicle belt relative to the test article, angle of the dummy head to its torso, placement of the internal harness on the dummy's shoulders, etc.'' Graco recommends that standardized locations for the camera lenses for both still photography and high-speed video cameras be identified in TP–213, with all locations specified in the three coordinates relative to fixed points on the updated standard seat assembly, ''similar to what was done by Calspan and VRTC in testing supporting this NPRM.'' Graco believes that ''This will resolve issues created by parallax differences between images and afford reviewers the ability to more reliably use photogrammetric analytical techniques.''

In response, NHTSA will consider referencing as best practices the camera and photo locations in the agency's Compliance Test Procedures.

NPRM To Add a Dummy Head Drop Procedure

For purposes of calibrating test dummies for testing, NHTSA has procedures in 49 CFR part 572, ''Anthropomorphic test devices,'' that specify performance criteria for various parts of the dummy when subjected to various tests. The CRABI–12MO dummy specifications [161] include a front and rear head drop test.[162] Graco asked if NHTSA intended to update the HIII–3YO head drop calibration procedure in part 572 [163] to include a rear head drop, or whether the current front-only calibration method would be sufficient for both rear-facing and front-facing dynamic tests with child restraint systems.

NHTSA agrees that there is merit to having a rear head drop test for the HIII–3-year-old dummy. The agency has used the HIII–3YO dummy in research supporting this final rule without a rear head drop procedure and the dummy performed satisfactorily, providing repeatable and reproducible results. However, NHTSA has tentatively determined that a rear head drop test would be reasonable since incorporation of the dummy leg positioning procedure discussed above will lead to more regular use of the dummy in tests of CRSs used rear-facing. This issue was not raised in the NPRM though, so NHTSA will not be including a rear head drop test in this final rule. Instead, NHTSA's upcoming NPRM would include a proposal to incorporate a rear head drop test for the HIII–3YO dummy, together with proposed response values for calibrating the response. The proposal is based on the CRABI–12MO dummy rear head drop test procedure. NHTSA plans to move promptly on this upcoming NPRM.

Procedures for 6YO Legs

Britax suggested NHTSA adopt procedures for positioning the HIII–6YO child dummy rear facing. Britax commented that the rear-facing positioning procedure for the HIII–3YO dummy adds clarity to FMVSS No. 213 for CRSs used rear-facing with weight limits up to 18.2 kg (40 lb). The commenter stated that the standard does not provide the same specificity for CRSs labeled for rear-facing use for children over 18.2 kg (40 lb). These child restraints are tested with the HIII–6YO child dummy.

In response, NHTSA does not plan at this time to develop leg positioning procedures for the HIII–6YO tested rear-facing, given the agency's current priorities and demands on its rulemaking resources. According to the 2019 National Survey of the use of Booster Seats [164] there are virtually no children 18.6 to 27.2 kg (41 to 60 lb) in CRSs used rear-facing, and there are only 0.2 percent of children 4- to 6-years-old in CRSs used rear-facing. Thus, it appears that these CRSs are not used rear-facing by children above 18.2 kg (40 lb). That being said, the Safety Act requires manufacturers of restraints recommended for children over 18.2 kg (40 lb) to certify their child restraints meet all applicable FMVSS and are free of safety-related defects at these higher occupant weights. Compliance of child restraints with FMVSS No. 213 is assured by this requirement in the Safety Act that manufacturers certify compliance for each child restraint. The agency is able to review the basis for that certification and may conduct testing, with the HIII–6YO in this instance, to assure compliance.

*g. Table Summarizing Dummy Selection Criteria*

For the convenience of readers, Table 13 below illustrates FMVSS No. 213's dummy selection criteria as amended by this final rule as discussed above.

As a practical matter, most CRS would be subject to testing using at least two dummies since CRS are usually sold for children of weights spanning more than one weight category. A CRS that is recommended for a weight range that overlaps, in whole or in part, two or more of the weight ranges is subject to testing with the dummies specified for each of those ranges (571.213, S7). For example, a CRS that is recommended for children weighing 5 to 35 pounds will be subject to tests with the newborn, CRABI–12MO, and HIII–3YO dummies. This is also true for CRS that are recommended for height ranges that overlap, in whole or in part, two or more of the height ranges.

TABLE 13—SUMMARY OF THIS FINAL RULE'S DECISIONS ABOUT DUMMY SELECTION CRITERIA

| CRS recommended for use by children of these weights or heights— | Are compliance tested by NHTSA with these dummies (subparts refer to 49 CFR part 572) |
|---|---|
| Weight (W) ≤ 5 kg (11 lb), Height (H) ≤ 650 mm (25.5 inches) | Newborn (subpart K). |
| Weight 5 kg (11 lb) < W ≤ 10 kg (22 lb), Height 650 mm (25.5 inches) < H ≤ 750 mm (29.5 inches) | Newborn (subpart K), CRABI–12MO (subpart R). |

[161] 49 CFR part 572, subpart R, sections 572.150–572.155.

[162] 49 CFR 572.152.

[163] 49 CFR part 572, subpart P.

[164] Enriquez, J. (2021, May). *The 2019 national survey of the use of booster seats* (Report No. DOT HS 813 033). National Highway Traffic Safety Administration. Link: *https://crashstats.nhtsa.dot.gov/Api/Public/Publication/813033* [last accessed July 26, 2023].

TABLE 13—SUMMARY OF THIS FINAL RULE'S DECISIONS ABOUT DUMMY SELECTION CRITERIA—Continued

| CRS recommended for use by children of these weights or heights— | Are compliance tested by NHTSA with these dummies (subparts refer to 49 CFR part 572) |
|---|---|
| Weight 10 kg (22 lb) < W ≤ 13.6 kg (30 lb), Height 750 mm (29.5 inches) < H ≤ 870 mm (34.3 inches) | CRABI–12MO (subpart R) (Tested only rear-facing). |
| Weight 13.6 kg (30 lb) < W ≤ 18.2 kg (40 lb), Height 870 mm (34.3 inches) < H ≤ 1100 mm (43.3 inches) | HIII–3YO (subpart P). |
| Weight 18.2 kg (40 lb) < W ≤ 22.7 kg (50 lb), Height 1100 mm (43.3 inches) < H ≤ 1250 mm (49.2 inches) | HIII–6YO (subpart N). |
| Weight 22.7 kg (50 lb) < W ≤ 29.5 kg (65 lb), Height 1100 mm (43.3 inches) < H ≤ 1250 mm (49.2 inches) | HIII–6YO (subpart N) and weighted HIII–6YO (subpart S). |
| Weight greater than 29.5 kg (65 lb), Height greater than 1250 mm (49.2 inches) | HIII–10YO (subpart T) *. |

* HIC is not a pass/fail criterion when testing with the HIII–10YO dummy.

(**Note:** CRSs with internal harnesses exceeding 29.5 kg (65 lb) with an dummy are not tested with that dummy on the child restraint anchorage system of the updated standard seat assembly.)

## X. Add-On School Bus Child Restraint Systems

FMVSS No. 213 has provisions that provide for a type of add-on CRS that is designed for exclusive use on school buses. The CRS is a specially labeled ''harness,'' which the standard defines in S4 as ''a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child.'' [165] FMVSS No. 213 has special accommodations for harnesses manufactured exclusively for use on school bus seats because many school districts and school bus operators need a product with a seat back mount to transport preschoolers, children who need help sitting upright, and children who need to be physically restrained because of physical or behavioral needs.[166] The seat back mount of the specialized harnesses manufactured for use on school bus seats does not use a seat belt to attach to the seat and thus can be used on large school buses without seat belts, which comprise most large school buses. The school bus harnesses are excluded from a general requirement of FMVSS No. 213 that child restraints must be capable of meeting FMVSS No. 213 when attached by a seat belt per S6.1.2(a)(1)(iv)(A), Table 5 to S5.3.2 and Table 3 to S5.1.3.1(a) in FMVSS No. 213b.

NHTSA has become aware of a CRS that is also designed exclusively for school bus use. The CRS uses a seat back mount to attach to the school bus seat without the use of a seat belt. However, because the CRS is not a harness, it does not qualify as a school bus harness under the wording of the standard and is not permitted under FMVSS No. 213.[167]

In the NPRM, NHTSA proposed to amend FMVSS No. 213 to make the standard's definition more design-neutral regarding CRSs that are designed for exclusive use on school bus seats. To permit restraints other than harnesses for exclusive school bus use, NHTSA proposed to add a definition of ''school bus child restraint system'' in S4 of FMVSS No. 213 that would define the term as a child restraint system (including harnesses), sold for exclusive use on school bus seats, that has a label conforming with S5.3.1(b) of FMVSS No. 213. CRSs without the label in S5.3.1(b) cannot be certified as a school bus CRS. The NPRM also proposed to amend several requirements in the standard to apply them to school bus child restraint systems.

### Discussion of Comments and Agency Responses

All commenters responding to this proposal supported the NPRM. The National Association for Pupil Transportation (NAPT), Salem-Keizer Public Schools (Salem-Keizer), IMMI, SRN, and SBS supported the proposed addition of the ''school bus child restraint system'' to the definition section of FMVSS No. 213, along with the performance standards associated with this new child restraint system classification. Salem-Keizer supported the proposal but suggested a number of miscellaneous changes that were beyond the scope of the rulemaking (some discussed below). IMMI states that the amendment making child restraints for school bus use more design-neutral enables manufacturers to continue development of new products that meet the unique needs of school transportation.[168]

SRN supported the proposal, noting that having a separate category will also make it easier to establish when requirements apply to certain types of restraints, *e.g.,* child restraints in passenger vehicles versus school buses. However, SRN and SBS state that child safety restraint systems made for school bus use only are anchored to bus seating by means of a cam wrap (described in the NPRM as ''seat back mount or a seat back and seat pan mount attachment method''), which makes them entirely inappropriate for use in other types of vehicles. These commenters state that the products should be labeled clearly for use on school buses only, given the difference in the kinds of vehicle seats on school buses and passenger cars. SRN also suggested improvements to the labeling requirements (some discussed below).

NHTSA has reviewed these comments and has determined that the proposal should be adopted for the reasons stated in the NPRM. The school bus child restraint systems are required to be labeled, as proposed in the NPRM.

Some of the comments that were outside the scope of the rulemaking are described below. Salem-Keizer requested a change to the word ''harness,'' as, it explained, ''harness''

[165] Harnesses must meet all applicable requirements of FMVSS No. 213 but harnesses are excluded from several requirements, *e.g.,* they are excluded from having to have attachments that connect to a vehicle's child restraint anchorage system and from side impact protection requirements.

[166] 69 FR 10928, March 9, 2004.

[167] NHTSA letter to IMMI, September 21, 2016: *https://isearch.nhtsa.gov/files/14-001678%20IMMI%20STAR%20crs.htm.*

[168] In its comment, IMMI indicates that the amendment would make address some confusion IMMI had in the past as to how products other than harnesses could be produced for school bus use. IMMI states that it had thought that NHTSA had found its school bus product ''as an acceptable child restraint for school bus use'' and, IMMI believed, had approved it under FMVSS No. 213. NHTSA would like to address a few points to avoid any ongoing confusion. To be clear, NHTSA determined in the past that the STAR is not a harness under FMVSS No. 213 because the device did not meet the definition of ''harness'' in S4 of the standard. NHTSA would not have approved the STAR for school bus use. NHTSA does not endorse or approve motor vehicles or items of motor vehicle equipment.

promotes a negative connotation to parents when Salem-Keizer discusses using a harness with their child. The commenter said it typically refers to the restraints as a ''safety vest.'' Salem-Keizer also suggested changing the term of ''Child Restraint System'' to ''Child Safety Restraint System'' or ''Child Securement System'' for the same reason. The commenter also suggested allowing school bus only infant CRSs that would better enable infant restraints to fit in closely spaced school bus seats. SRN urged NHTSA to review and update the current warning label that would be placed on school bus child restraint systems so that the label is more durable, conspicuous, and easier to read. NHTSA appreciates these comments as suggestions for possible future action.

## XI. Corrections and Other Minor Amendments

This final rule makes the following corrections and minor amendments to regulatory text. They were proposed in the NPRM except as noted. NHTSA received no comments on the proposed amendments. The corrections in (e) through (g) are simple technical corrections.

*a. Corrected Reference*

The agency amends S5.5.2(l)(3)(i) of FMVSS No. 213 by correcting a reference to ''S5.5.2(l)(3)(A)(i), (ii), or (iii).'' The reference is corrected to refer to ''S5.5.2(l)(3)(i)(A), (B), or (C).''

*b. Section 5.1.2.2, Section 5.4.1.1, and Figure 2*

The agency is removing and reserving S5.1.2.2 because it applies to CRSs manufactured before August 1, 2005, and so is no longer relevant. The agency is removing and reserving S5.4.1.1 because it applies to CRSs manufactured before September 2007, and so is no longer relevant. The agency is removing Figure 2 because it applies to CRSs manufactured before August 1, 2005 so is no longer relevant. The agency is renaming Figure 2A in FMVSS No. 213 as Figure 2 in FMVSS No. 213b.

*c. Table to S5.1.3.1(a) and Test Configuration II*

The agency is correcting the table to S5.1.3.1(a), which specifies performance criteria and test conditions for FMVSS No. 213's occupant excursion requirements for add-on forward-facing CRSs. When NHTSA created the table, the agency inadvertently did not include a reference to Test Configuration II of FMVSS No. 213. This final rule corrects this oversight.

*d. Updating Reference to SAE Recommended Practice J211/1*

Current specifications of the test device for built-in child restraints in FMVSS No. 213 (S6.1.1(a)(2)(i)(B) and S6.1.1(a)(2)(ii)(G)) require that instrumentation and data processing be in conformance with SAE Recommended Practice J211 (June 1980), ''Instrumentation for Impact Tests.'' This final rule updates the reference to SAE Recommended Practice J211/1 (1995).

*e. Section S5.9(a)*

The first sentence of S5.9(a) states: ''Each add-on child restraint *anchorage* system manufactured on or after September 1, 2002, other than a car bed, harness and belt-positioning seat, shall have components permanently attached to the system that enable the restraint to be securely fastened to the lower anchorages of the child restraint anchorage system specified in Standard No. 225 . . .'' (emphasis added). It is clear from the context of S5.9(a) and by the final rule adopting S5.9(a) (64 FR 10786, 10816; March 5, 1999), that NHTSA was referring to child restraint systems and not to child restraint anchorage systems. (There are no ''add-on'' child restraint anchorage systems and car beds, harnesses and belt-positioning seats are not child restraint anchorage systems.) This final rule removes the word ''anchorage'' to correct this error.

*f. Table for S5.3.2*

Currently, the Table for S5.3.2 in FMVSS No. 213 shows the required means of installation for different types of add-on child restraint systems. The November 2, 2020 NPRM proposed amending the table to show the incorporation of a Type 2 seat belt installation requirement, among other things. This final rule makes a further change, a housekeeping measure. The table currently shows one column for attachment to the child restraint anchorage system without explicitly showing a provision for tether use if needed, unlike the Type 1 seat belt installation entry that has two columns (showing a Type 1 installation without the tether, and a Type 1 installation with the tether, if needed). We are formatting the Table for S5.3.2 so that it likewise has two similar columns (showing an installation using the lower anchorages of a child restraint anchorage system without the tether, and an installation with the tether, if needed). These installations reflect the dynamic test procedure in S6.1.2 for attachment with the child restraint anchorage system, to show that the procedure involves attachments with and without the tether. This formatting into two columns aligns the table with FMVSS No. 213a, where the installation of the child restraint system is segmented into installation with lower anchorage attachments without the use of a tether, and installation with lower anchorage attachments with the use of a tether, if needed. These changes to the Table for S5.3.2 relate only to formatting and do not change any current substantive requirement.

*g. Tether Tension Range*

Currently, FMVSS No. 213 indicates a tension for the tether as not less than 53.5 N and not more than 67 N (S6.1.2(d)(i) and (ii)), which the NPRM had also proposed. During the tests with the updated standard seat assembly, NHTSA found that in some cases the tethers could not be tightened to the proposed tension range because the updated standard seat assembly has a thinner seat back cushion (2 inches) than the current FMVSS No. 213 seat. This final rule adopts a tension range of not less than 45 N and not more than 53.5 N. This lower range in tension values for the tether are based on tether tensions achieved in the tests conducted at VRTC and therefore are practicable. FMVSS No. 213a for side impact protection, which has the same standard seat design, adopted these new tension ranges for tether installations.

*h. Clarifying FMVSS No. 213a and the 40 lb Cut Off*

On June 30, 2022, NHTSA published a final rule [169] adding FMVSS No. 213a for CRS side impact protection. This new standard applies to ''add-on child restraint systems that are either recommended for use by children in a weight range that includes weights up to 18 kg (40 lb) regardless of height, or by children in a height range that includes heights up to 1100 millimeters regardless of weight, except for car beds and harnesses.'' NHTSA believes some readers might ask whether ''up to 18 kilograms (40 pounds)'' and ''up to 1100 millimeters'' are meant to include 18 kilograms (40 pounds) and 1100 millimeters (43 inches). The answer is no, the ''up to'' term was not meant to include either 18 kilograms (40 pounds) or 1100 millimeters (43 inches). To make this clearer, the agency plans to clarify the wording of FMVSS No. 213a in the upcoming NPRM. The NPRM would propose to amend FMVSS No. 213a's ''up to'' language to instead state: ''less than 18 kilograms (40 pounds)''

[169] 87 FR 39234.

and ''less than 1100 millimeters (43 inches)'' so that it is clear that the 18 kg (40 lb) and 1100 mm (43 inches) values are not included in the applicability.[170]

## XII. Beyond the Scope of the Rulemaking

There were many comments on matters beyond the scope of this rulemaking. NHTSA has discussed a number of these in various parts of this preamble and has noted that the agency is not addressing the matters further in this final rule. The agency will consider the comments as ideas for potential future changes to FMVSS No. 213 and NHTSA child passenger safety programs. In this section, we list some other matters that were raised by commenters, and for some, we offer our observations on the topic. This list is not all-inclusive of the comments that were out of scope of this rulemaking, or the thoughts commenters had on how NHTSA should proceed on various topics.

*Retractor*

Volvo comments that, when assessing belt-positioning (booster) seat performance, it is important to simulate the function of the vehicle belt retractor in a realistic way. Volvo believes that the operation of the belt retractor is especially important when assessing the belt-positioning seat's dynamic performance in a crash. Volvo states that the slack (film-spool effect) introduced by the retractor is not present with the fixed attachment that is used in the FMVSS No. 213 current standard seat assembly today. Volvo stated that UMTRI has developed a surrogate retractor and performed a test using the FMVSS No. 213 standard seat assembly and that the test results showed similar kinematics to those achieved with a production seat belt.[171] Volvo added that, UMTRI[172] used the surrogate retractor in a comparative study of belt-positioning seats and concluded that tests with the surrogate retractor were as repeatable as the tests performed with current FMVSS No. 213 conditions. Volvo encouraged NHTSA to include a vehicle retractor function in the FMVSS No. 213 updated standard seat assembly and that this would better represent vehicle crash tests when using the standard seat assembly. SRN also urged NHTSA to consider using a shoulder belt that replicates the spooling effect of a real vehicle seat belt (such as the surrogate belt developed by UMTRI),[173] rather than a fixed belt, to better represent a real crash when performing a FMVSS No. 213 dynamic sled test.

*Agency Response*

While including a retractor in FMVSS No. 213 to test belt-positioning seats is out of scope of this rulemaking, NHTSA notes here that the agency has been highly interested in including a retractor in the regulation. In fact, NHTSA has funded the research[174] [175] to which the commenters refer (Volvo and SRN), to develop a surrogate seat belt retractor to achieve a more realistic shoulder belt performance compared to the static (fixed) shoulder belt currently used in FMVSS No. 213. If assessments show the surrogate retractor is suitable for incorporation into NHTSA compliance tests, NHTSA plans to propose adopting it into FMVSS No. 213[176] [177] in the future.

*Height-Less Devices*

Volvo commented that belt-positioning products should not be categorized as belt-positioning (booster) seats or used as child restraints in cars unless they elevate the child and shorten the seat cushion length, better ensuring the child is in an optimal position in a crash and is not slouching. Volvo stated that due to limitations inherent to the standard's seat assembly (replicating the vehicle environment and limitations in dummy sensitivity), some of these devices have passed FMVSS No. 213's dynamic test requirements even though they do not elevate the child or shorten the seat cushion length while seated. Volvo states: '' 'Foldable devices' that do not boost, but have passed FMVSS 213 certification, resulted in submarining[178] when in vehicle crash tests (Tylko et al., 2016).''

Volvo states that a common concern for ''height-less booster'' types of devices is that they interfere with the seat belt function and do not reposition the child into the seat belt like booster seats do. Volvo states that when used in a crash, height-less devices will straighten the seat belt out between the seat belt anchorage points, resulting in seat belt slack that will influence the kinematics of the child in a crash. If the rerouting is extensive, slack will be introduced as the belt is straightened out, resulting in delayed coupling of the child to the seat belt. The commenter believes that these height-less devices place the lap belt further forward on the thighs, with no direct contact with the pelvis, and that this placement will result in delayed restraint of the pelvis leading to poor kinematics and increased loadings on the child. Volvo is also concerned that a height-less device can result in the child not being restrained over the strong parts of the body, since the child is not raised to the correct position.

Volvo believes height-less devices do not adhere to the protection principles of a CRS and are not booster seats or CRSs. The commenter states that ECE R129 addresses the height of the booster by requiring a certain angle of the lap belt and specifying that the lap belt must pass over the top of the thigh, just touching the fold with the pelvis. Volvo suggests that NHTSA add requirements addressing the shortcomings of heigh-less devices, including requirements for

[170] This change would reflect NHTSA's original intent, as shown in several instances in the June 2022 final rule. See, *e.g.,* 87 FR at 39244, col. 2 (''NHTSA also explained in the NPRM that the FMVSS No. 213a side impact test replicates a near-side crash as experienced by a child under 18.1 kg (40 lb) in a safety seat''); 87 FR 39244, col.3. (''No commenter objected to NHTSA's requiring manufacturers of booster seats to limit use of boosters to children weighing at least 18.1 kg (40 lb).'')

[171] Manary MA, Klinich K, Boyle K, Orton N, Eby B, Weir Q. Development of a surrogate shoulder belt retractor for sled testing of booster seats, *DOT HS 812 660, NHTSA,* Washington, DC, USA, 2019a. Link: *https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/812660_development-surrogate-shoulder-belt-retractor-for-sled-testing-of-booster-seats.pdf* [last accessed July 26, 2023].

[172] Klinich KD; Jones MH, Manary MA, Ebert SH, Boyle KJ, Malik L, Orton NR, Reed MP. Investigation of potential design and performance criteria for booster seats through volunteer and dynamic testing. *DOT HS 812 919. NHTSA,* Washington, DC, USA, 2020 Link: *https://rosap.ntl.bts.gov/view/dot/49119* [last accessed July 26, 2023].

[173] Klinich KD; Jones MH, Manary MA, Ebert SH, Boyle KJ, Malik L, Orton NR, Reed MP. Investigation of potential design and performance criteria for booster seats through volunteer and dynamic testing. *DOT HS 812 919. NHTSA,* Washington, DC, USA, 2020 Link: *https://rosap.ntl.bts.gov/view/dot/49119* [last accessed July 26, 2023].

[174] Manary, M.A., Klinich, K.D., Boyle, K.J., Orton, N.R., Eby, B., & Weir, Q. (2016, January) Development of a Surrogate Shoulder Belt Retractor for Sled Testing (Report No. UMTRI–2016–21). Washington, DC: National Highway Traffic Safety Administration. Link: *https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/812660_development-surrogate-shoulder-belt-retractor-for-sled-testing-of-booster-seats.pdf* [last accessed July 26, 2023].

[175] Klinich KD; Jones MH, Manary MA, Ebert SH, Boyle KJ, Malik L, Orton NR, Reed MP. Investigation of potential design and performance criteria for booster seats through volunteer and dynamic testing. *DOT HS 812 919. NHTSA,* Washington, DC, USA, 2020 Link: *https://rosap.ntl.bts.gov/view/dot/49119* [last accessed July 26, 2023].

[176] NHTSA has published preliminary drawings of the surrogate retractor which can be found in Docket No. NHTSA–2013–0055–0017.

[177] NHTSA tests using the surrogate retractor can be found in NHTSA's Research Vehicle Test Database at: *https://www.nhtsa.gov/research-data/research-testing-databases#/vehicle.* Test numbers V10063 through V10064 and V10325 through V10339.

[178] Submarining occurs when the pelvis of the occupant slides below the lap belt allowing it to load the abdomen, potentially resulting in internal injuries.

lap belt positioning (that the device must result in the lap belt positioned on top of the thigh and in contact with the pelvis) and for enabling the child to bend their legs (to avoid being out of position in a crash by slouching).

Similarly, CHOP comments that the primary role of a belt-positioning booster seat is to adapt the vehicle seating geometry and restraints, which are designed for adults, to the child. CHOP explained that the nature of a booster seat, which raises the child, is intended to account for both anthropometry and biomechanical differences between children and adults. CHOP states that the boost provided by the structure of the traditional belt-positioning seats is needed for seat belt fit reasons but also to avoid slouching, allowing children to bend their legs over the front edge of the belt-positioning seat. CHOP states that its research using the PIPER [179] pediatric human body model illustrates important differences in kinematics between optimally positioned occupants and those positioned in more naturalistic and realistic postures.[180] [181] CHOP states it is important to assess, using pediatric human volunteers, how these novel designs influence child posture and not limit assessment only to dummy evaluation in sled/crash tests.

CHOP states that its preliminary work examining the performance of height-less devices revealed important differences between static belt fit and dynamic belt performance. CHOP noted that height-less devices route the belt away from the soft abdomen and the neck similar to traditional belt-positioning seats but do so without the ''boost'' in an effort to reduce the size and mass of the product and increase the convenience of the restraint. CHOP explains that both sled tests and computational modeling using the PIPER human body model demonstrated delayed contact between the lap belt and the pelvis due to the fact that the lap belt is positioned far forward on the thighs.[182] CHOP states that by using kinematic rather than kinetic metrics to assess submarining, such as change in torso angle (which is the angle made by shoulder to hip to knee), this research identified differences between the height-less devices and traditional belt-positioning seats that may indicate a potential for suboptimal kinematics that current dummies and FMVSS No. 213 test modes may not be able to reproduce. CHOP believes future research should further develop evaluation metrics that can accurately predict how real children sustain injuries—using advanced technology such as computational human body models ''to generate an environment where innovation is encouraged but unintended consequences are avoided.''

*Agency Response*

While additional requirements for height-less devices and belt-positioning seats are beyond the scope of this rulemaking, NHTSA appreciates the commenters' views. The agency believes a booster seat's effectiveness comes from, in part, its ability to elevate a child in a vehicle relative to a vehicle's lap and shoulder belt to achieve proper belt fit. NHTSA has sponsored a research program [183] as a first step toward possibly determining a minimum boosting height for CRSs recommended for children weighing more than 18.2 kg (40 lb). The program is evaluating, among other things, the need to specify a minimum boosting height that would provide enough lift to position the child to achieve a beneficial seat belt fit and allow bending of the knees.

A booster seat is a platform used to elevate a child in a vehicle.[184] A belt-positioning seat (which is considered a booster seat in FMVSS No. 213) raises the child above the vehicle seat to better position the seat belts on the child's torso.[185] In the past, NHTSA determined that devices that simply reposition vehicle belts for children, and not reposition the child to fit the belts, are not child restraint systems. In addition, NHTSA has also determined that a product that provides a seating surface for a child meets the definition of a CRS in FMVSS No. 213, but not the definition of a booster seat if it does not position a child to improve belt fit.[186] NHTSA considers the ability of a booster seat to elevate or lift the child to be crucial to occupant protection in side as well as frontal crashes. Lifting the child enables the child to fit the belts and attain the benefits of the belt, stay in-position in a crash as opposed to slouched, and positioned to benefit from other safety systems in the vehicle, such as side curtain air bags installed to meet FMVSS No. 214 (''Side impact protection'') and No. 226, ''Ejection mitigation.'' NHTSA considers the boosting ability of a booster seat key to protecting children in side impacts.

NHTSA's research program is therefore also studying the need to specify a minimum booster seat height so that children are positioned high enough to benefit from a vehicle's side curtain air bags. In NHTSA's June 30, 2022, final rule establishing side impact requirements for child restraint systems,[187] NHTSA determined that ''When children outgrow their safety seats, they transition to a booster seat, which on average raises a seated child by 82 mm (3.22 inches), which would position the child high enough to benefit from the vehicle's side curtain air bags installed to meet Standards No. 214 and 226.'' NHTSA is studying all the above issues in the research program. Among other issues, the agency is considering the possibility of a rulemaking to specify a minimum boosting height in FMVSS No. 213 and No. 213b.

*Simulated Front Seat Back Interaction*

A few commenters suggested adding a front seat forward of the standard seat assembly. Consumer Reports (CR) argues that data indicate that head contact is a primary source of injury, and therefore NHTSA should represent a front seat back to represent the rear seat environment more accurately. Similarly, SRN and SBS suggest that

[179] The PIPER Child model is a finite element model was developed to scale the model for children between at least 1.5 and 6 years of age. It was created as part of the Piper Project Link: *http://piper-project.org/about* (last accessed March 21, 2023).

[180] Maheshwari J, Sarfare S, Falciani C, Belwadi A. Analysis of Kinematic Response of Pediatric Occupants Seated in Naturalistic Positions in Simulated Frontal Small Offset Impacts: With and Without Automatic Emergency Braking. Stapp Car Crash J. 2020 Nov;64:31–59. PMID: 3363600. Link to request access: *https://www.proquest.com/docview/2499437312?pq-origsite=gscholar&fromopenview=true* [last accessed July 26, 2023].

[181] Maheshwari J, Sarfare S, Falciani C, Belwadi A. Pediatric occupant human body model kinematic and kinetic response variation to changes in seating posture in simulated frontal impacts—with and without automatic emergency braking. Traffic Inj Prev. 2020 Oct 23:1–5. doi: 10.1080/15389588.2020.1825699. Epub ahead of print. PMID: 33095067. Link to request access from authors: *https://www.researchgate.net/publication/344843077_* [last accessed July 26, 2023].

[182] Belwadi et al, ''Efficiency of booster seat design on the response of the Q6 ATD in stimulated frontal sled impacts'' Protection of Children in Cars Conference, Munich, Germany, 2017.

[183] Klinich, K.D., Jones, M.H., Manary, M.A., Ebert, S.H., Boyle, K.J., Malik, L., Reed, M.P. (2020, April). *Investigation of potential design and performance criteria for booster seats through volunteer and dynamic testing* (Report No. DOT HS 812 919). Washington, DC: National Highway Traffic Safety Administration. Link: *https://rosap.ntl.bts.gov/view/dot/49119* [last accessed July 26, 2023].

[184] 51 FR 5335, 5337 (February 13, 1986). ''Booster seats are designed to be used by older children who have outgrown child seats. By elevating these children, the- booster seat allows the child to see out of the vehicle and to use the belt system in the vehicle.'' Id.

[185] *https://www.nhtsa.gov/interpretations/06-007784as* (Hip Hugger).

[186] *https://www.nhtsa.gov/interpretations/14129ar2jan* (Safesit).

[187] Footnote omitted. 87 FR at 39237.

NHTSA consider adding a front seat structure in a future rulemaking.

*Agency Response*

We appreciate the information provided in the comments but note that we are not considering rulemaking in this area. Adopting a simulated front seat back into the FMVSS No. 213 frontal test is out of scope of this rulemaking.

We also note that NHTSA is conducting research to address the characteristics of the seat back, head restraints and B-pillar in vehicles [188] [189] to help reduce head injuries in adults and children. This research aims to develop a repeatable testing method to assess the injury potential from head contact on seat backs and lower B-pillars. Different head forms, locations (seat backs and b-pillar), test speeds (15 mph and 20 mph) and potential countermeasures are being explored. This research will provide more insights into the head to seat back/B-pillar impacts that may help NHTSA isolate the different injury mechanisms contributing to child head injuries against the seat backs and B-pillars.

*Include Interpretations in FMVSS No. 213*

JPMA and Evenflo encouraged NHTSA to incorporate past interpretations into the standard or into TP–213 as appropriate. In response, NHTSA does not believe it is necessary to incorporate interpretations as a general matter because the interpretations are available on the agency's website and are searchable. Moreover, NHTSA declines to incorporate the interpretations in this final rule because extending the rulemaking to incorporate them would lengthen the time to draft this final rule and increase the volume of the rule's subject matter. Nonetheless, NHTSA appreciates the suggestion and will consider the matter for a possible future action.

*Adopting Side Impact Protection*

A number of entities (SBS, AAP, CR, the People's Republic of China, Dorel, and CHOP) commented on NHTSA's development of an FMVSS for side impact protection requirements for child restraint systems. The side impact final rule, published on June 30, 2022 (87 FR 39234), adopted a side impact standard seat assembly that is harmonized with the frontal updated standard seat assembly adopted by this final rule.[190] NHTSA finalized the side impact standard seat assembly after considering the comments it received on the 2020 NPRM proposing this frontal updated standard seat assembly. Other side impact issues brought up by the commenters have been addressed in the side impact rule.

*Misuse Testing*

Mr. Jankowiak commented that if ''real world'' use includes the unintentional misuse of CRSs, FMVSS No. 213 should then encompass this in the compliance testing, if feasible. Mr. Jankowiak explained that because a not insignificant number of CRSs are unintentionally misused or improperly installed, to reflect ''real-world use'' the tests should include misuse and/or improperly installed CRSs, if feasible.

In response, NHTSA agrees, and FMVSS No. 213 currently includes misuse tests given the degree of misuse in the field. An example is the 32-inch head excursion requirement that CRSs must meet without use of a tether. NHTSA adopted the test based on data showing that most caregivers were not attaching the top tethers of child restraints. Later, NHTSA adopted another head excursion test, to supplement the 32-inch test requirement. The supplemental test is a correct use test. It requires child restraints to meet a 28-inch head excursion requirement and in that test, NHTSA will attach a top tether if the child restraint includes one and its written instructions direct consumers to use it.

In addition, FMVSS No. 213 includes a number of requirements to reduce the likelihood of misuse during real-world use. For example, NHTSA has standardized the means of anchoring a child restraint to a vehicle, stating that ''standardization of the means of anchoring a child restraint to a vehicle is vital to prevent misuse. By requiring all restraints to be attachable to vehicle seats by the vehicle seat belt, consumers will be assured of a uniform method of attaching the restraint and there will be less confusion regarding that aspect of use.'' [191]

*Other Miscellaneous Issues*

NHTSA also received comments asking that the agency: take action on fake and counterfeit products in the U.S. market; conduct research to gather more current feedback from parents and child passenger safety technicians on trends and patterns regarding common CRS misuse; ensure that mass media images are screened for technical accuracy; support increased education, public communications, and enforcement efforts regarding the importance of belt-positioning seat use for children through age 12. While such comments are out of scope of the rulemaking, NHTSA appreciates the information provided.

## XIII. Child Passenger Safety Issues Arising From Research Findings

In the NPRM, NHTSA requested comment on several developments in child passenger safety observed in the research context that have raised the agency's concerns. NHTSA requested comments on how best to approach those developments.[192] In this section, we discuss the comments we received and offer some of our current thinking on the topic.

*a. CRSs Associated With Submarining or Ejection*

NHTSA states in the NPRM that the agency has reviewed research reports on testing done on certain kinds of child restraints that raise concerns about a potential unreasonable risk of submarining [193] or ejection from the devices in crash scenarios. The CRSs in question are (a) inflatable booster seats, and (b) ''shield-type'' child restraints (shield-only-CRSs) available in markets overseas.

Inflatable Booster Seats

The NPRM explains that Transport Canada conducted 25–30 mph frontal impact crash tests of different vehicle models, with the HIII–6YO and HIII–10YO dummies restrained using inflatable boosters in rear seats. In the tests, the dummies experienced significant submarining due to excessive compression of the inflatable booster

[188] Louden, A., Wietholter, K., Duffy, S.J. ''Lower Interior Impacts to Seat Backs and B-Pillars'' SAE Government Industry Meeting (2017) Link: *https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/sae2017alouden.pdf* [last accessed July 26, 2023].

[189] Wietholter, K. (2022, July). Development of test procedures for lower interior rear seat occupant protection (Report No. DOT HS 813 319). National Highway Traffic Safety Administration Link: *https://rosap.ntl.bts.gov/view/dot/62933* [last accessed May 22, 2023].

[190] Some differences exist between the standard seat assemblies due to the nature of the test. For example, the seat belt and the child restraint anchorage system anchorages are centered in the frontal seat assembly, and aligned 300 mm from the edge of the seat in the side impact seat assembly. The design of the lower anchorages are different but their locations are the same, and some structural reinforcements are different between the standard seat assemblies due to the different loading conditions.

[191] NPRM, 43 FR 21470, 21472; May 18, 1978.

[192] When NHTSA published the NPRM, the agency docketed a paper in the NPRM docket (Docket No. NHTSA–2020–0093) that discussed the issues in more detail.

[193] ''Submarining'' refers to the tendency for a restrained occupant to slide forward feet first under the lap belt during a vehicle crash, which could result in serious abdominal, pelvic, and spinal injuries.

during the crash event. Submarining refers to when the dummy's pelvis slides under the lap belt and the lap belt directly loads the abdomen. Submarining is a serious safety risk because the lap belt will directly load the occupant's vulnerable soft organs in the abdomen rather than stay on the strong bones of the pelvis where crash forces can be tolerated better. Booster seats sold in Canada are required to compress by not more than 25 mm (1 inch) when subjected to a 2,250 N quasi-static compression force. Inflatable booster seats cannot currently meet and are unlikely to meet the requirements of this quasi-static compression test and so inflatable booster seats are not sold in Canada. The NPRM requested comment on the findings of the research crash tests conducted in Canada, the booster seat compression test requirements in Canada, and the safety need to have a compression test in FMVSS No. 213.

Comments Received

Various commenters responded to this issue of a compression test for belt-positioning seats. (A belt-positioning seat is a type of booster seat.) The Automotive Safety Council (ASC) commended NHTSA for taking a proactive approach for these CRSs. SBS commented that it has limited experience with inflatable boosters ''and it was not very positive.'' SBS states that it found that inflatable belt-positioning seats led to poor belt fit and poor positioning of the child, ''including children slipping off the seat in normal driving.'' CR states it has not seen submarining with inflatable belt-positioning seats in its 35 g/35 mph testing.

Volvo commented in support of a compression test. It states that the dynamic stability of a booster seat is essential as this will influence its performance in a real-world crash. The commenter explains that it compared three different types of backless booster seats having varied degrees of stiffness and design using a human body model [194] and a dummy [195] in a vehicle environment.[196] It states that, although there were similarities in initial belt fit, there were alarming differences in dynamic performance. Specifically, Volvo states that one of the booster seats deformed substantially and this in turn caused unfavorable kinematics and seat belt interaction. Volvo believes that the Transport Canada tests on inflatable boosters referenced in the NPRM [197] that found submarining ''highlights the importance of a stable dynamic booster seat design.'' Volvo emphasizes that the Transport Canada tests were performed in vehicles ''which indicates that the consequences of excessive deformation of the booster is not recognized in the standard seat assembly to the same extent.'' It states that, given the differences in the standard seat assembly and vehicle environment and the limitations of the current test dummies and performance criteria to detect submarining and the risk of abdominal injury, Volvo supports the introduction of a quasi-static compression test requirement. The commenter cautioned though, that the test should be written so that the belt-positioning seat would not be sub-optimized for one specific position of the pressure plate. Volvo states it is especially important that ''the booster seat does not deform excessively on the front edge of the booster as this is the most critical area'' to prevent submarining.

BubbleBum, a manufacturer of inflatable belt-positioning seats sold in the U.S., commented against having a compression test in FMVSS No. 213. The manufacturer states that the experimental data from Transport Canada [198] shows that submarining occurs in some but not all tests with inflatable belt-positioning seats. BubbleBum states that Transport Canada 2012 [199] test data of 42 full scale rigid barrier frontal vehicle crash tests shows that submarining also occurs in 31 percent of conventional,[200] non-inflatable, belt-positioning seats. BubbleBum states that Transport Research Laboratory (TRL) [201] [202] found that the vast majority of conventional and rigid belt-positioning seats TRL tested exhibited unfavorable kinematics, indicating submarining, in a series of 12 sled tests with 6- and 10-year-old dummies on the seats over a range of different lap belt paths. BubbleBum argues that field observations of conventional belt-positioning seats show that they are extremely effective in mitigating injury as shown in a 2009 Children's Hospital of Philadelphia study [203] that found children aged 4 to 8 years restrained in belt-positioning seats were 45 percent less likely to sustain injuries than similarly aged children who were using the vehicle seat belt alone. The commenter states that the study also shows that, for backless belt-positioning seats, there was a complete absence of abdominal injuries.

BubbleBum argues that all the findings presented indicate that the experimental observations of belt-positioning seat performance predict there should be substantial abdominal injury in the field, yet such injuries are not observed in the field. The commenter further states that it has conducted extensive crash testing on regulatory standard seat assemblies and real vehicle seats and used conventional belt-positioning seats as controls and found that the 6-year-old dummy did not submarine on the BubbleBum or on the conventional belt-positioning seats. The commenter states that it has 11 years of field experience, with over a million units in the field around the world and 70 percent of these seats in the U.S. and that there are no reported injuries, including submarining injuries, in crashes involving its product. BubbleBum states that its product has been crash tested, approved to the ECE requirements in Europe in the deflated state and tested in the U.S. in a deflated state. It states that its product performs well in the deflated test because it can maintain its structural integrity due to

[194] Modeling efforts included 18 frontal impact simulations with the finite element PIPER 6-year-old human body model (HBM) investigating different combinations of parameters (booster shape, stiffness, and guiding loop design).

[195] Testing efforts include 3 frontal impact sled tests with a Q10 dummy using vehicle rear seat interiors.

[196] Bohman K, Östh J, Jakobsson L, Stockman I, Wimmerstedt M, Wallin H. Booster cushion design effects on child occupant kinematics and loading assessed using the PIPER 6-year-old HBM and the Q10 ATD in frontal impacts, *Traffic Inj Prev* 20, Aug 2020;1–6 Link for paid access: *https://www.tandfonline.com/doi/abs/10.1080/15389588.2020.1795148* [last accessed July 26, 2023].

[197] Tylko et al., 2016, Docket No. NHTSA–2020–0093–0013.

[198] Referenced in the NPRM and docketed NHTSA–2020–0093–0013 at *www.regulations.gov*.

[199] Tylko, S. and Bussieres, A. ''Responses of the Hybrid III 5th Female and 10-year-old ATD Seated in the Rear Seats of Passenger Vehicles in Frontal Crash Tests'' IRCOBI Conference 2012 *http://www.ircobi.org/wordpress/downloads/irc12/pdf_files/65.pdf* [last accessed July 26, 2023].

[200] By conventional belt-positioning seats, NHTSA means belt-positioning seats that have a more rigid seating platform and that are non-inflatable.

[201] TRL is an accredited Technical Service in the United Kingdom for the type-approval of child restraint systems to UN Regulation No. 129.

[202] Visvikis, C. Carrol, J. Pitcher, M. and Waagmeester, K. ''Assessing Lap Belt Path and Submarining Risk in Booster Seats: Abdominal Pressure Twin Sensors vs. Anterior-superior Iliac Spine Load Cells.'' IRCOBI Conference 2018. *http://www.ircobi.org/wordpress/downloads/irc18/pdf-files/92.pdf* [last accessed July 26, 2023].

[203] Arbogast KB, Jermakian JS, Kallan MJ, Durbin DR. Effectiveness of belt-positioning booster seats: an updated assessment. Pediatrics. 2009 Nov;124(5):1281–6. doi: 10.1542/peds.2009–0908. Epub 2009 Oct 19. PMID: 19841126. Link for access: *https://publications.aap.org/pediatrics/article-abstract/124/5/1281/72162/Effectiveness-of-Belt-Positioning-Booster-Seats-An?redirectedFrom=fulltext* [last accessed July 26, 2023].

the High-Density Cellular Structure and webbing harness which, the manufacturer states, are integral to the functionality and performance of the seat. The commenter argues that adding compression deflection testing to the regulation would not result in a ''measurable benefit'' to the health and safety of children.

JPMA commented with its view that research, testing and field performance assessment must clearly demonstrate that addition of a compression test offers real-world injury-reduction benefit given that a compression test would be applied to all belt-positioning seats if incorporated. JPMA said it would similarly like to see clear injury-reduction benefit of rebound control metrics before such an addition is considered, because the depth of the proposed standard seat assembly is 45 mm (1.77 inches) less than the current standard seat assembly and developing and testing rebound control features would be further complicated as a result.

NHTSA's Views

The agency thanks the commenters for their views on this matter. While NHTSA agrees with BubbleBum that some non-inflatable belt-positioning seats showed submarining during testing and that the BubbleBum did not always submarine in these tests, NHTSA does not agree that this information is a satisfactory answer to the increased risk of submarining that test data are associating with inflatable belt-positioning seats. Some non-inflatable belt-positioning seats may be prone to submarining for features other than seat stiffness, but several additional studies to the ones noted in the NPRM have also identified a greater risk of submarining associated with inflatable belt-positioning seats.

IIHS and UVA recently conducted a large-scale, parametric study [204] of 714 individual belt-positioning seats to examine the link between booster seat designs and child occupant response during simulated collisions. The study used the PIPER human body model, a finite element (FE) model of the FMVSS No. 213 proposed standard seat assembly and characterized key parameters in the belt-positioning seat design space from a sample of 44 physical belt-positioning seats. The findings of the study found inflatable boosters almost always resulted in submarining of the dummy. In NHTSA's view, this recent study, the studies referenced in the NPRM and Volvo's data (see Volvo's comment above) suggest that inflatable belt-positioning seats are posing a greater risk of submarining. NHTSA would like to determine whether such risk is unreasonable.

BubbleBum argues that its product is safe because it meets the performance measures of FMVSS No. 213 while deflated. NHTSA is not persuaded, as a deflated device is akin to a ''height-less'' device. The risk of submarining is real with height-less devices, but difficult to detect because the child dummy pelvis joint does not have the flexibility of a human child pelvic joint. A human child can bend its lower back and pelvis into a slouched position allowing the seat belt to ride up the abdomen of the child (as the child submarines). In contrast, the dummy's lower back and pelvis cannot bend as much as a human (*i.e.,* bend into a slouching position), which reduces the chances of the seat belt moving upwards towards the abdomen when the dummy is seated. In addition, FMVSS No. 213's test uses a locked (fixed) Type 2 seat belt that does not allow seat belt spool out (contrary to the retractors in an actual vehicle), which prevents the dummy from having a more forward movement in the dynamic event. Submarining can occur as the child pelvis slips under the lap belt, loading the abdomen. This means that the locked retractor is helping overcome the submarining that would occur had the event been in a real vehicle with an actual retractor. The locked retractor leads to unrealistically favorable results in terms of submarining. Similarly, the locked retractor may enable a dummy to exhibit head and knee excursions within FMVSS No. 213's limits when sitting on the standard seat assembly without a CRS—even when the limits may be grossly exceeded in a test of the dummy in a real vehicle with an actual retractor. This results in an analysis of a restraint that is more favorable than it would likely be in a real-world crash. As noted in the section above, NHTSA is working to add a retractor to FMVSS No. 213 that is not locked.

JPMA commented that because the depth of the proposed standard seat assembly is 45 mm (1.77 inches) less than the current standard seat assembly, developing and testing rebound control features would be further complicated. NHTSA understands that by ''depth'' JPMA is referring to the thickness of the seat foam. We disagree that a thinner seat foam in the updated standard seat assembly would complicate booster seat rebound control features. Testing with the updated standard seat assembly showed that current belt-positioning seat designs already meet the updates to the standard, therefore, there will be no need to develop new rebound control features. JPMA did not provide any evidence on how the thinner foam would impact belt-positioning seat designs.

NHTSA conducted compression tests [205] on 14 CRS models [206] spanning the different materials observed in the market (Table 14). Test results showed that BubbleBum and Hiccapop (both inflatable belt-positioning seats) were the only belt-positioning seats that failed the compression tests with deflections reaching 42.56 and 49.4 mm (1.67 and 1.94 inches) respectively. The Clek Ozzi belt positioning seat made of EPS foam almost reached the 25 mm (1 inch) deflection limit. The data indicate that all non-inflatable belt-positioning seats would meet the compression test, and test results with the updated standard seat assembly show that belt-positioning seats also meet the performance requirements. Therefore, most non-inflatable belt-positioning seats would not need redesigning if a compression test were adopted into FMVSS No. 213.

[204] Parametric study of booster seat design characteristics Jason Forman, Matthew Miller, Daniel Perez-Rapela, Bronislaw Gepner, University of Virginia, Center for Applied Biomechanics; Marcy Edwards, Jessica Jermakian, Insurance Institute for Highway Safety (US). Link: *https://www.iihs.org/topics/bibliography/ref/2245* [last accessed July 26, 2023].

[205] Following CMVSS Test Method 213.2 Section 4 which specifies using a 203 mm diameter flat plate to apply a vertical force at a rate between 50 to 500 mm/min. An initial preload of 175N (~40 lbs) is applied followed by a 2250N (~500 lbs.) load while measuring the deflection when fully loaded. Booster seat must deflect less than 25 mm.

[206] The Mifold was also tested but was excluded from this data as it was not determined whether the Mifold was a belt-positioning seat.

TABLE 14—BELT-POSITIONING SEAT TESTED FOR COMPRESSION WITH MANUFACTURING/MATERIAL DETAILS

[NHTSA test results]

| Manufacturer | Model | Seat categories | Deflection (mm) |
|---|---|---|---|
| Evenflo | AMP Backless Booster | Injection molded | 8.39 |
| KidsEmbrace | Batman Backless Booster | Blow molded | 10.351 |
| Graco | Turbo GO Folding Backless Booster | Injection molded | 10.691 |
| Graco | Backless TurboBooster | Injection molded | 11.685 |
| Lil Fan | Slimline No Back Seat Booster | Blow molded | 12.654 |
| Cosco | Topside Backless Booster | Blow molded | 12.809 |
| Safety 1st | Incognito | EPP Foam | 13.717 |
| Graco | TurboBooster TakeAlong Backless Booster | Injection molded | 14.347 |
| Safe Traffic System | JD16100BKR–1 Delighter Booster | EPP Foam | 17.53 |
| Chicco | Booster | Injection molded | 17.968 |
| Harmony | Juvenile Youth Backless Booster | Blow molded | 19.054 |
| Clek | Ozzi Booster | EPP Foam | 24.234 |
| Bubble Bum | Backless Booster | Inflatable | 42.496 |
| Hiccapop | Uberboost Inflatable Booster | Inflatable | 49.427 |

JPMA believes that a compression limit should only be implemented if a measurable benefit can be determined. In response, the Safety Act authorizes NHTSA to issue safety standards to protect the public against unreasonable risk of accidents occurring and against unreasonable risk of death or injury in an accident. If the commenter is saying that NHTSA must identify injuries found in the field, that is an incorrect understanding of the Safety Act. NHTSA can move to issue FMVSS requirements based on research data alone, without waiting for an associated injury to be found in the field. BubbleBum argues that the absence of reported injuries in the field is evidence of the safety of their product. In response, reported injuries in the field may not reflect the extent of injuries in the field or the likelihood that such injuries may occur. Data are also sparse overall on injuries that may affect only two products in the market, so if injuries were occurring or being made more severe in the field due to an inflatable booster compressing in a crash, it is unlikely information about such injuries could be easily found. NHTSA believes the research data showing an increased risk of injury due to the product compressing in a crash is sufficiently concerning to warrant further exploration.

In response to BubbleBum's argument that a study showed that belt-positioning seats have proven to be highly effective in preventing injuries in the field, these data relate to conventional booster seats that do not compress in a crash. The booster seats in the study have a similar construction amongst them and are different from inflatable devices. The effectiveness findings for these boosters cannot be applied to a product that does not keep the child boosted (and protected against submarining) throughout the crash event.

NHTSA plans to continue to look at inflatable belt-positioning seats. The Automotive Safety Council, SBS and Volvo supported actions to address the potential increased risk to safety of inflatable designs. NHTSA is working to develop a surrogate retractor, and additional belt-positioning seat performance measures,[207] that may help detect submarining in belt-positioning seats by allowing some spool out of the seat belt webbing before locking, thus replicating the retractors in actual vehicles. When the work is complete, NHTSA will consider the merits of rulemaking to incorporate the surrogate retractor and additional belt-positioning seat performance requirements into FMVSS No. 213. The agency envisions that the future rulemaking could include other approaches that address height-less devices as well.

### Shield-Only-CRSs

Shield-only-CRSs only have a shield to restrain a young child's upper torso, lower torso, and crotch. While such CRSs are currently not available in the U.S., there are a wide variety of shield-only-CRSs in Europe intended for children weighing less than 13.6 kg (30 lb). Child dummies (representing children aged 18-months old and 3-years-old) restrained in shield-only-CRSs in simulated vehicle rollover tests, 64 km/h (40 mph) offset frontal impact vehicle crash tests, and in 64 km/h (40 mph) Allgemeiner Deutsher Automobil-Club (ADAC) type frontal impact sled tests were completely or partially ejected from the child restraints. The test results raise concern about the ability of a shield-only-CRS to retain small children in the CRS in certain crashes or in a rollover. The NPRM sought comment on the findings of these research tests. The agency asked if FMVSS No. 213 should require shield-only-CRSs to have additional shoulder belts and a crotch strap, similar to the requirements for child restraints that have belts designed to restrain the child (S5.4.3.3).

### Comments Received

NHTSA received comments providing perspectives from very different points of view. Cybex provided historical information relating to the research studies discussed in the NPRM to imply that current shield child restraint systems would not exhibit the performance found in the above tests. Cybex states that the European child restraint system overturning test was amended in UN Regulation No. 44 in February 2014 to be more stringent, in part to address the performance of shield systems in vehicle rollover tests. The improved overturning test procedure was also introduced in the new UN Regulation No. 129 for child restraints that entered into force on June 10, 2014. Cybex states that all shield systems type-approved after the aforementioned dates meet the improved overturning requirements, while ''the shield systems that were used by Tylko would not have been subject to these more stringent overturning requirements.'' Cybex also believes that shield systems used in a study by TRL [208] under contract to

[207] Klinich, K.D., Jones, M.H., Manary, M.A., Ebert, S.H., Boyle, K.J., Malik, L., . . . Reed, M.P. (2020, April). *Investigation of potential design and performance criteria for booster seats through volunteer and dynamic testing* (Report No. DOT HS 812 919). Washington, DC: National Highway Traffic Safety Administration. Link: *https://rosap.ntl.bts.gov/view/dot/49119/dot_49119_DS1.pdf* [last accessed July 26, 2023].

[208] Visvikis, C., et al., ''Evaluation of shield and harness systems in frontal impact sled

Britax were likely approved prior to the amendment made to the overturning test. Cybex states that UN R.129 is now the primary child restraint system regulation in those parts of the world that follow UN Regulations. The commenter believes that requirements in R.129 would prevent a shield system that allows the partial ejection described in the TRL study from gaining type-approval. The commenter suggests that NHTSA ''consider adopting performance-based requirements instead of specifying design constraints (*e.g.,* minimum radius, curvature of contactable surface, shoulder straps).''

Volvo commented that shield-only CRSs should not be used as they do not restrain a child according to fundamental principles of protection. The commenter explains that the fundamental principles include an early coupling between the occupant and the restraint, which leads to reduced loading on the child. Volvo states that a misuse study shows that shields are not fastened tight enough to the child's body, likely for the child's comfort. Volvo believes a shield-only child restraint inherently is likely to have a higher risk of slack as compared to a child restraint with a harness. ''A harness is needed to restrain the child over the strong parts of the body and to ensure that the child will not be ejected from the restraint.[209] Volvo states that crash testing,[210] [211] field studies,[212] and misuse observation [213] studies all provide evidence that shield-only CRS do not address the fundamental principles of protection and result in reduced occupant protection.

Volvo did not support the idea of requiring the shield-only CRSs to have shoulder belts and a crotch strap. The commenter states that an internal harness is needed to ensure that the strong body parts are engaged and to ensure early coupling with the child occupant, thus reducing the risk of ejection. Volvo believes that once the harness has been added to the child seat, the shield can be completely removed. Volvo states that adding the belts and strap may increase the risk of misuse as well as have a negative impact on ease-of-use.

Consumer Reports states that as there are not currently any shield-only child restraints in the U.S., preventing their use would presumably be more cost effective than the research and development needed to determine how to regulate them best.

NHTSA's Views

The agency appreciates the information from these commenters. NHTSA will consider them as it contemplates possible future actions the agency should take to address shield-only child restraints.

*b. Should infant carriers' height limits better align with their weight limits?*

NHTSA requested information on a matter showing up in the field concerning children under 1YO outgrowing infant carriers by height much earlier than by weight. Research studies conducted at UMTRI [214] show that some infant carriers marketed as suitable for children up to 13.6 kg (30 lb) cannot ''fit'' the height of a 95th percentile 1 YO or an average 1.5 YO.[215] NHTSA stated that the agency believes that infant carriers' height and weight recommendations should better match the children for whom the CRS is recommended. NHTSA requested comment on UMTRI's research findings. The NPRM asked: Should infant carriers' height and weight recommendations better match up to better accommodate the children for whom the CRS is recommended?

Comments Received

NHTSA received a number of views on this issue.

Evenflo states that individual manufacturers have historically determined whether their products can accommodate children recommended for their seats who fall within the height and weight limits and that research referenced in the NPRM confirms there are no uniform practices for child sizes that are being used by manufacturers for determining proper heights and weights for infant CRSs. Evenflo and Cybex refer to the UN child restraint regulation (UN R.129). Evenflo states that R.129 ''deals with this issue directly by specifying the child size data which must be used to classify child restraints.'' Cybex also references the Australia and New Zealand child restraint standard (AS/NZ 1754) which establishes critical dimensions for all manufacturers to use in the design and development of CRSs and belt-positioning seats. Evenflo and Cybex note that adopting the approach of these regulations would be a way to establish height and weight ranges for CRSs that can be applied consistently from manufacturer to manufacturer.

JPMA states it is open to the concept of aligning interior child restraint dimensions with child stature, and that it has seen similar concepts reflected in other regulations. While the commenter did not name the regulations, NHTSA assumes JPMA is referring to the UN and AS/NZ standards.

Consumer Reports (CR) supports that height limits should more accurately match rear-facing-only infant seat weight limits to reflect real children. CR explained that higher weight limits should not be used as a marketing tool without an appropriate accompanying height limit (*e.g.,* a 13.6 kg (30-pound) CRS should not have a 29-inch height limit).

CR believes that NHTSA is missing an opportunity to address the current disconnect in the weight and height limits of rear-facing-only infant seats. CR explains that current rear-facing-only infant seats have weight maximums that are not commensurate with the seat's shell height or height limitations. CR states that of the 36 infant seats currently in CR's ratings, 33 have maximum weight limits of between 13.6 kg (30 lb) and 15.8 kg (35 lb) but have height limits between 762 to 812 mm (30 and 32 inches). CR comments that, based on CDC growth charts, the combination of the lowest weight limit for that group (13.6 kg (30-pound)) with the highest height limit (812 mm (32 inches)): a 15.8-kg (35-pound) child is approximately a 95th percentile 28-month-old, whose height would be between 889 to 1016 mm (35 to 40 inches). CR adds that of the 66 infant seats in the market, only three

experiments,'' TRL, UK. Johannsen, H., Beillas, P., Lesire, P. ''Analysis of the performance of different architectures of forward-facing CRSs with integral restraint system,'' International Technical Conference on the Enhanced Safety of Vehicles Conference, Seoul, Republic of Korea, 2013, Paper 13–0226.

[209] Kent R, Forman J. Restraint biomechanics, In: Yoganandan N. Accidental Injury, Springer, 2015:116–8.

[210] Johanssen H, Beillas P, Lesire P. Analysis of the performance of different architectures of forward-facing CRS with integral restraint systems, 23rd Int. ESV Conf., Paper No. 13–0226, Seoul, Korea, 2013 Link: *https://www-esv.nhtsa.dot.gov/Proceedings/23/files/Session%205%20Oral.pdf* [last accessed July 26, 2023].

[211] Tylko S, Bussiere A, Lepretre JP. Comparison of HIII and Q series child ATDs for the evaluation of child restraint performance during dynamic rollover, 12th Int. Conf. Protection of Children in Cars, Munich, Germany, 2013.

[212] Edgerton, Orzechowski KM, Eichelberger MR. Not all child safety seats are created equal: the potential dangers of shield booster seats, Pediatrics 113(3), 2004:153–158 Link: *https://www.researchgate.net/publication/5855078_Not_All_Child_Safety_Seats_Are_Created_Equal_The_Potential_Dangers_of_Shield_Booster_Seats* [last accessed July 26, 2023].

[213] Morris SD, Arbogast KB, Durbin DR, Winston FK, Misuse of booster seats, Inj Prevention 6(4), 2000:281–4 Link: *https://injuryprevention.bmj.com/content/injuryprev/6/4/281.full.pdf* [last accessed: July 26, 2023].

[214] Manary. M., et al., ''Comparing the CRABI–12 and CRABI–18 for Infant Child Restraint System Evaluation.'' June 2015. DOT HS 812 156. The report is available in the docket for this NPRM.

[215] Field experience indicates that children at the higher end of growth charts typically outgrow the carriers by height at around 9–10 months.

have a 889-mm (35-inch) height limit and 46 out of 66 infant seats listed there have a 15.8-kg (35-pound) limit. CR opined that this practice potentially results in misuse for kids remaining in their rear-facing infant carrier after they have exceeded the height limitations. CR recommends that NHTSA should set standards prohibiting manufacturers from having weight and height allowances that are so disparate.

Volvo states that it is essential to ensure that the optimal CRS is used for the child (age and size) and that the child must fit in the infant CRS, for it to provide good protection. Volvo supports NHTSA's view that infant CRS height and weight recommendations should better align with the children for whom the CRS is recommended. Volvo states that the UMTRI study shows that infant CRSs vary in size, so it is essential that customers are provided clear and relevant information on what size child the CRS is designed for. Volvo believes that an appropriate clearance between the top of the head and the top of the CRS shell is essential because in the real-world environment, there is likely a vehicle seat in front posing a risk of head impacts if the head is positioned too close. Volvo notes that it encourages transfer to a larger CRS that can be used rearward-facing as soon as the infant is not carried easily in the infant CRS.

SRN disagrees that weight limits of CRSs should better match the height limits. SRN states that, having experienced when rear-facing weight limits were inadequate to keep even many 1-year-old rear-facing, ''we appreciate the buffer that today's models provide.'' (NHTSA understands this to mean SRN appreciates the higher weight limits of the infant carriers sold today even if a child may outgrow an infant seat by height before reaching the weight limit of the CRS, because the higher limits result in more children riding rear facing.) SRN states that since the height limit is constrained by the fore-aft space in vehicles, any alignment in height and weight limits would involve lowering the rear-facing weight limits. SRN states, ''This is not a direction we want to go, especially given that many state laws now specify a child age limit for RF assuming the ample weight limits provided by today's CRSs, even for the heaviest children.'' SRN states it would be better to see a greater emphasis on the instructions for height limits, especially the application of a required rear-facing height maximum indicator directly on the front of the CRS.

Graco does not address the specific question NHTSA posed about infant seats. Instead, the commenter discusses FMVSS No. 213's seat back height requirements generally and Graco's ideas for amending the standard relating to child restraints that have adjustable-height seat backs that ''grow with the child.''

NHTSA's Views

NHTSA is aware of the approach of UN R.129 and AS/NZ 1754 and is considering the benefits and challenges of such an approach. We believe that some of the changes in this final rule will address this issue to an extent. For example, infant carriers will most likely be marketed for children up to 13.6 kg (30 lb) and not heavier children. As a result, there will be many fewer infant carriers (if at all) in the future where children will outgrow them by height before reaching the weight threshold. If a manufacturer decides to recommend an infant carrier for children over 13.6 kg (30 lb), then that CRS will be subject to testing using the 3-year-old dummy as well and will need to be large enough to accommodate the dummy. All matters raised by the commenters will be considered by NHTSA as the agency decides whether and how to address this matter in the future.

*c. Virtual Models for CRS Fit*

NHTSA has supported the development of computer models of children of different weights and heights to assist CRS manufacturers in designing child restraints that better fit the children for whom the CRS is recommended.[216] These virtual models are available to the public to improve the fit of CRSs to children.[217] NHTSA requested comments from manufacturers and other parties on whether they use the models and whether the models are helpful.

NHTSA received several comments providing feedback on the models. Britax identified what it called a few key areas for future development that the commenter believes would further increase the utility of the virtual models for CRS fit. Britax suggests the following additions to the model: (i) the expansion of the covered age range through infancy, and (ii) the ability to articulate the toddler model, especially flexion angle at the hip and flexion/extension of the torso and neck. Similarly, Cybex, Evenflo, and Volvo state that the models would be more useful if they could be manipulated into more natural positions or adjusted at major points. Volvo encourages further developments, including features making it possible to change the posture of the models to fit the specific CRS or vehicle seats. Evenflo states that virtual fit checks of the mannequins in car seats would be possible.

Graco states that it has not used NHTSA's virtual child models and is unlikely to do so in the future as they are provided in STL format and are not particularly suitable for manipulation (such as changing the seating posture or reorienting the arms relative to the torso) in the computer aided design software used by Graco. Graco suggests that NHTSA might consider making the models available in a data format that can be more readily integrated into users' computer aided modeling tools, such as Parasolid or STEP.

NHTSA's Response

NHTSA appreciates the suggestions for improving the models. The agency will consider improving the virtual models so that they provide more functionality, such as with moving joints to better position the virtual models, and so they can be used in a more accessible data format.

**XIV. Lead Time and Compliance Dates**

The NPRM proposed that the compliance date for most of the amendments in the rulemaking action would be three years following the date of publication of the final rule in the **Federal Register**, with optional early compliance permitted, except as follows:

- A 180-day compliance date was proposed for the changes to registration card requirements and the proposed changes to permit more add-on school bus child restraint systems (early optional compliance would be permitted for both); and,
- A 1-year compliance date was proposed for labeling and printed instructions requirement changes (early optional compliance would be permitted).

Comments Received

All comments on this issue supported the proposed lead times and compliance dates. JPMA supported the proposed option for early compliance ''so CRS model designs can be optimized to comply with one set of test configurations, rather than two.'' The commenter also added that the lead time for labeling and printed instructions changes should provide

[216] NHTSA has sponsored an UMTRI project developing toddler virtual dummies for use in improving of the fit of CRSs to child passengers. Information on a 2015 UMTRI workshop describing development of the toddler virtual fit dummies can be found at: *http://umtri.umich.edu/our-results/projects/umtri-workshop-new-tools-child-occupant-protection.*

[217] Toddler virtual models available for download at: *http://childshape.org/toddler/manikins/.*

time to allow manufacturers to use current labels for a period so ''existing supplies can be exhausted and production processes are minimally interrupted by the changes.''

Dorel, Evenflo, and, IMMI also supported the proposed option for early compliance. Dorel stated that labeling, registration and dummy compliance testing in the NPRM could be brought to a final rule quickly as these were ''not controversial.'' Evenflo asked whether the labeling changes that must be implemented by the end of the one-year lead time and the testing changes that must be implemented by the end of 3 years will require two labeling updates, which, Evenflo stated, seems inefficient and potentially confusing to the consumer. Graco recommended that the effective dates of both the revised frontal and the new side impact coincide. Graco suggested that all proposed changes affecting labels become mandatory concurrently, except for S5.5.2(f) where Graco suggested that manufacturers should have the option of adopting this section upon issuance of the final rule or a short time thereafter.

Agency Response

This final rule adopts the compliance dates proposed in the NPRM except to provide 1 year for the changes to school bus CRS, labeling, and registration card changes. The change is made to align with the requirements for the labeling and printed instructions changes, to reduce the need for manufacturers having to deal with multiple compliance dates within the standard. We note that there is minimal or no practical consequence to providing a year for the changes rather than 180 days. The amendments pertaining to the school bus CRS and registration program are permissive and do not require manufacturers to change any of their current practices. Further, voluntary early compliance is permitted, so manufacturers can implement the changes as soon as they want. NHTSA does not believe having the labeling changes with an earlier compliance date than the new testing requirements would be inefficient as early compliance is an option and manufacturers could accommodate early compliance if they so choose. NHTSA's data show that current CRS models, for the most part, already would comply with the new FMVSS No. 213b test requirements. NHTSA also does not believe that making labeling changes and testing requirements effective on two different dates would be confusing to the consumer. The labeling changes and testing are transparent to the consumer; they usually do not know how CRSs are tested and the labeling changes with different weight and height recommendations will simply guide whether to buy and/or how to use a CRS.

If early compliance is chosen by a manufacturer for a CRS model, the CRS model must meet all applicable requirements in FMVSS No. 213, including the amendments to FMVSS No. 213 made by this final rule, or all applicable requirements in FMVSS No. 213b. Manufacturers will not be allowed to pick and choose among the requirements within a standard or comply early with some in a standard and not in others. In part, this provision is to support the efficiency of NHTSA's compliance program.[218] If manufacturers were permitted to pick and choose which requirements they would like to meet early, NHTSA would have to keep track of the standard's individual requirement according to manufacturer's input on hundreds of CRS models. NHTSA seeks to limit such burdens on the compliance program. In addition, the requirement reduces potential consumer confusion about which standards a purchased CRS meets. If manufacturers were permitted to meet some requirements early but not others, consumers may believe they purchased a CRS meeting, for example, the upgraded standard FMVSS No. 213b when the CRS did not meet all the requirements in FMVSS No. 213b. NHTSA would like to avoid this possible source of consumer misunderstanding. This would also allow for a more equitable enforcement across manufacturers with the two distinct updates to the standard.

Under § 30111(d) of the Safety Act, a standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed, unless NHTSA finds, for good cause shown, that a different effective date is in the public interest and publishes the reasons for the finding. A 3-year compliance period is in the public interest because CRS manufacturers need to gain familiarity with the updated standard seat assembly and new test protocols and will need time to assess their products' conformance to the new FMVSS No. 213b requirements. They will need time to implement appropriate design and production changes. A 3-year lead time is also appropriate because it aligns with the typical design cycle of child restraints. Aligning with design cycles can help reduce the cost of compliance and possible price increases on consumers.

The 3-year compliance date for the final rule, with the early compliance option, provides the same 3-year lead time as the final rule establishing FMVSS No. 213a, ''Child restraint systems—Side impact protection'' (87 FR 39234, June 30, 2022). The compliance date for FMVSS No. 213a is June 30, 2025, with optional early compliance permitted. NHTSA does not see a reason to delay the compliance date of the side impact rule another year, or to shorten the lead time for this final rule a year. Making the compliance dates of the two rules coincide has some merit but the consequences of aligning them with regard to this final rule and the side impact protection standard (FMVSS No. 213b) outweigh such merit. With the option for early compliance, manufacturers have sufficient flexibility in deciding how they will meet these final rules.

## XV. Regulatory Notices and Analyses

*Executive Order (E.O.) 12866, E.O. 13563, E.O. 14094 and DOT Rulemaking Procedures*

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, E.O. 14094, and the Department of Transportation's regulatory procedures. This final rule is nonsignificant under E.O. 12866 and E.O. 14094 and was not reviewed by the Office of Management and Budget. It is also not considered ''of special note to the Department'' under DOT Order 2100.6A, *Rulemaking and Guidance Procedures.*

*Estimated Benefits and Costs*

This final rule amends FMVSS No. 213 by (a) updating the standard seat assembly to better represent the rear seating environment in the current vehicle fleet, (b) amending several labeling and owner information requirements to improve communication with today's CRS caregivers and to align with current best practices for child passenger safety, and (c) amending how NHTSA uses dummies to make the agency's compliance tests more evaluative of CRS performance. The rule will provide some safety benefits with, at most, minimal incremental costs.

Updated Standard Seat Assembly

The updates to the standard seat assembly in this final rule will better align the performance of CRSs in compliance tests to that in real world crashes.

[218] This provision is regularly used by NHTSA when the agency permits optional early compliance with a standard. The agency restricts manufacturers from selectively meeting some but not all of the amended requirements.

Based on NHTSA's tests of CRS models representing the market of infant carrier, convertible, all-in-one, and booster type CRSs on the updated standard seat assembly, the agency believes that only a few CRSs may need to be redesigned to meet the requirements of the standard on the updated standard seat assembly, and that those redesigns will be minor.[219] NHTSA is providing a lead time of three years for the redesign. The agency has not estimated a cost of this redesign, as we assume the redesign could be incorporated into a typical business model involving manufacturers refining child restraint designs to freshen their product lines. The refinements result in new product offerings that appeal to consumers and help manufacturers remain competitive.

There will be costs involved in changing to the updated standard seat assembly used by NHTSA to assess CRS compliance. However, manufacturers are not required to use the updated standard seat assembly. As a practical matter they usually choose to do so to test their CRSs as similarly to the way NHTSA will test them, but it is not a requirement to so test. The one-time cost of the updated standard seat assembly sled buck is about $9,300. If a manufacturer chooses to build the assembly itself or uses one at an independent test facility, either way there would be minimal cost impacts when the cost of the assembly and testing CRSs is distributed among the hundreds of thousands of CRSs that would be sold by the manufacturers.

We are retaining the Type 1 seat belt assembly test for an additional 3 years (2029) so there will be temporary additional annual test costs of $5,198,000 [220] for testing with the Type 1 seat belt assembly up to the year 2029.

Labeling and Owner Registration

The agency believes that the updates to the labeling requirements will benefit safety by reducing the premature transition of children from CRSs used rear-facing to forward-facing CRSs, and from forward-facing CRSs to booster seats. The agency estimates 1.9 to 6.3 lives will be saved and 2.6 to 8.7 moderate-to-critical severity injuries will be prevented annually by aligning FMVSS No. 213's CRS user instructions with current best practices on transporting children.[221]

The changes to the labeling requirements will have minimal or no cost impacts, as mostly they are voluntary. This final rule provides manufacturers the flexibility to provide required information in statements or a combination of statements and pictograms at locations that they deem most effective. Manufacturers may provide child weight and height ranges for the use of CRSs in a specific installation mode on existing labels by simply changing the minimum child weight limit values. Since no additional information is required on the labels by this final rule, the size of the label does not need to be increased. Thus, there will be minimal or no additional cost for the labels. There will also be no decrease in sales of forward-facing child restraint systems or of booster seats as a result of the final rule's provisions to raise the minimum child weight limit values for forward-facing CRSs and booster seats. Most forward-facing CRSs cover a wide child weight range, so the labeling changes will only affect how caregivers use the products and not the quantity sold. For example, caregivers will still purchase forward-facing CRSs but will use them when the child is at least 1. They will still purchase convertible CRSs but will not turn them forward-facing until the child is at least 1. They will still purchase booster seats but will only move the child into them when the child reaches 18.2 kg (40 lb).

The changes to the registration program generally lessen restrictions and are optional for manufacturers to implement. These changes to the registration card provide flexibility to manufacturers in how they communicate with consumers and will likely help improve registration rates and recall completion rates. NHTSA cannot quantify the benefits at this time. NHTSA estimates there are no costs associated with the changes. While the changes could affect the collection of information pursuant to the Paperwork Reduction Act (which is discussed later in this section), there are no additional material costs associated with the changes to the registration card or to the CRS label or printed instructions pertaining to registration. Manufacturers could use the same card and labels and just change the wording on them.

Dummies

The updates to how dummies are used in the test for assessing CRS performance better accord with current CRS designs and best practices for transporting child passengers compared to the current specifications in FMVSS No. 213. NHTSA cannot quantify the possible safety benefits at this time.

Some of the changes lessen testing burdens by reducing the extent of testing with dummies. For example, the final rule specifies that CRSs for children weighing 10 kg to 13.6 kg (22 to 30 lb) will no longer be subject to certification with the HIII–3YO dummy. NHTSA estimates a reduction in testing cost of $717,600 for the current number of infant carrier models in the market.[222] Also, CRSs for children weighing 13.6 to 18.2 kg (30 to 40 lb) will no longer be certified with the CRABI–12MO. However, the agency does not expect any reduction in testing costs from this latter modification since all CRSs with internal harnesses are sold for children weighing less than 13.6 kg (30 lb), and so are still subject to testing with the CRABI–12MO in that regard. The final rule also provides that the CRABI–12MO dummy will no longer be used in forward-facing tests. NHTSA estimates a reduction in testing cost of $2,373,600 [223] for the forward-

[219] Preliminary tests with the updated standard seat assembly using an average 23.3 g peak acceleration pulse and an average 47.5 km/h (29.5 mph) velocity within the FMVSS No. 213 acceleration corridor showed dummy HIC and chest accelerations in some booster seats, tested with the HIII–6YO and HIII–10YO dummies, near or exceeding allowable threshold levels. While NHTSA expects that some booster seats may need to be redesigned to meet the performance measures when tested with a higher acceleration pulse, these redesigns could be accomplished without additional material cost. For example, different foams could be used in the CRS seating cushions that work better with the proposed stiffer standard seat cushion foam to lower the HIC and chest g values.

[220] There are currently 70 infant carrier models, 48 convertible CRS models, 60 all-in-one CRS models and 21 combination CRS models. Each infant carrier would be tested in 2 configurations with Type 1 seat belt including with and without base. Each convertible and all-in-one CRS would be tested using Type 1 seat belt installation in rear facing, forward facing and forward facing with tether. Each combination CRS would be tested using Type 1 seat belt installation in forward facing and forward facing with tether. Each CRS would be subject to tests on average between 1 to 3 dummies. The cost of a sled test is estimated at $4,600. Therefore, the temporary additional test cost is estimated to be $5,198,000.

[221] Details of the benefits analysis are provided in the Appendix to the November 2, 2020 NPRM. 85 FR at 69455.

[222] There are currently 52 infant carrier models with recommended upper weight limit exceeding 10 kg (22 lb). Each CRS designed for rear-facing use is tested in three different configurations on the updated standard seat assembly with each dummy used for testing the CRS: (1) CRS installed using seat belts, (2) CRS installed using the lower anchors and no tether, and (3) CRS installed without the base using the lower anchors and no tether. The cost of a sled test is estimated at $4,600. Therefore, the cost savings by not testing the 52 infant carrier models using the HIII–3YO dummy is estimated to be $717,600 (= $4,600 × 3 × 52). Since manufacturers typically conduct more than one test in each of the CRS installation configurations, NHTSA expects the actual cost savings to be greater than the estimated $717,600.

[223] There are currently 129 forward facing CRSs (including convertibles, all-in-one and combination) that would no longer be tested with the CRABI–12MO. Each forward-facing CRS is tested in the following different configurations: (1) CRS installed using Type 2 seat belts, (2) CRS

facing CRSs that will no longer be certified with the CRABI–12MO. The positioning procedure for the legs of the HIII–3YO dummy in CRSs used rear-facing is unlikely to have cost implications because the procedure is the same as that currently used by manufacturers.

Similarly, NHTSA believes that testing CRSs solely with the HIII–6YO rather than the H2–6YO dummy will not have significant cost implications. This is because there would be little or no design changes needed for the CRSs since nearly all the CRSs tested with the HIII–6YO on the standard seat assembly complied with all the FMVSS No. 213 requirements.[224] While some commenters (Graco, JPMA, Dorel and Evenflo) opposed the proposal as they believe chin-to-chest contacts have not been resolved, the data presented showed that the CRSs are still capable of meeting the updated standard with the HIII–6YO. NHTSA's testing also showed that CRSs that currently comply with FMVSS No. 213 using the H2–6YO dummy also met all the performance requirements in the standard when tested using the HIII–6YO dummy on the new standard seat assembly. Manufacturers are increasingly certifying at least some of their CRS models for older children using the HIII–6YO dummy rather than the H2–6YO. This shows that most manufacturers already have access to the HIII–6YO dummy and use it. Most CRS manufacturers hire commercial test labs to test their CRSs for conformance with FMVSS No. 213 requirements. These labs already have the HIII–6YO dummy since some of their CRS manufacturer clients currently want to certify their CRSs based on tests with the HIII–6YO dummy. Thus, NHTSA believes there will not be an additional cost associated with purchasing and testing with the HIII–6YO dummy.

NHTSA believes that a lead time of three years is sufficient for redesigning CRSs that may need modifications to comply with the amendment. Most CRSs will need minor or no modifications as a result of the final rule. Further, a 3-year time frame aligns with the typical design cycle for CRSs. The agency notes also that the rule is designed so that manufacturers can simply change the weight of the children for whom the CRS is recommended to meet some of the requirements. Narrowing the population of children for whom the CRS is recommended reduces the certification burden on manufacturers as well as the number of tests NHTSA may run to assess compliance.

School Bus Child Restraint Systems

The changes to include in FMVSS No. 213 a new type of add-on CRS manufactured for exclusive use on school bus seats allow the sale of these products. The agency estimates there are no cost impacts associated with the changes because the amendment is permissive in nature. The changes will benefit school bus transportation by permitting more devices to be developed and used to transport preschool children and children with special needs. However, NHTSA cannot quantify these benefits at this time.

*Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions), unless the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Agencies must also provide a statement of the factual basis for this certification.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. NHTSA estimates there to be 38 manufacturers of child restraints, none of which are small businesses. Even if there were a small CRS manufacturer, the impacts of this rule will not be significant. NHTSA believes that virtually all CRSs would meet FMVSS No. 213's requirements on the new seat assembly without modification. Manufacturers may need to change the labels on their child restraints pursuant to the requirements, but the changes are minor and can be met by simply switching out values on current labels.

*National Environmental Policy Act*

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

*Executive Order 13132 (Federalism)*

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the

installed using Type 2 seat belts and tether, (3) CRS installed using the lower anchors and no tether, and (4) CRS installed using the lower anchors and tether. The cost of a sled test is estimated at $4,600. Therefore, the cost savings by not testing the 129 forward facing models using the CRABI–12MO dummy is estimated to be $2,373,600 (= $4,600 × 4 × 129).

[224] Of 21 tests with the HIII–6YO on the updated standard seat assembly, all passed the performance metrics, except for one that failed head excursion limits.

manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this final rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend that this rule would preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

*Civil Justice Reform*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

*National Technology Transfer and Advancement Act*

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the International Organization for Standardization (ISO) and the SAE International (SAE). The NTTAA directs the agency to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. NHTSA searched for but did not find voluntary consensus standards directly applicable to the amendments in this final rule, other than ASTM D3574–11 ''Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams,'' and the minor amendment to update the reference to SAE Recommended Practice J211/1 to the March 1995 version.

However, consistent with the NTTAA, NHTSA reviewed the procedures and regulations developed globally to dynamically test child restraints and found areas of common ground.[225] While there is no single procedure or regulation of another country that sufficiently replicates frontal crashes occurring in the U.S., the agency considered various aspects of international regulations pertaining to the testing of child restraint systems. NHTSA analyzed aspects of the seating assemblies used by NPACS, ECE R.44 and Transport Canada's CMVSS No. 213 and the frontal test speeds used worldwide in sled tests. NHTSA adopts a requirement to test CRSs with Type 2 (3-point) seat belts, which is consistent with CMVSS No. 213. NHTSA concludes that the provisions increase CRS safety and promote harmonization of our countries' regulatory approaches in testing CRSs.

*Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal 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 more than $100 million annually (adjusted for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2010 results in $136 million (110.993/81.606 = 1.36). This rule will not result in a cost of $136 million or more to either State, local, or Tribal governments, in the aggregate, or the private sector. Thus, this rule is not subject to the requirements of sections 202 of the UMRA.

*Executive Order 13609 (Promoting International Regulatory Cooperation)*

The policy statement in section 1 of E.O. 13609 provides, in part:

The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA received a comment from the People's Republic of China making suggestions about flammability and side impact requirements for child restraints. The comment was out of the scope of this rulemaking.

In the discussion above on the NTTAA, NHTSA has noted that it has reviewed the procedures and regulations developed by Transport Canada regarding testing CRSs with Type 2 (3-point) seat belts and agrees with the merits of the CMVSS No. 213 provision.

[225] The NTTAA seeks to support efforts by the Federal government to ensure that agencies work with their regulatory counterparts in other countries to address common safety issues. Circular No. A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' January 27, 2016, p. 15.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Before seeking OMB approval, Federal agencies must provide a 60-day public comment period and otherwise consult with members of the public and affected agencies concerning each collection of information requirement. NHTSA believes the changes to the owner registration program (571.213, S5.8) constitute changes to a ''collection of information'' requirement for child restraint system manufacturers. NHTSA is providing a 60-day comment period on reporting burdens and other matters associated with the owner registration program new requirements.

OMB has promulgated regulations describing what must be included in the request for comment document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

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;

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;

How to enhance the quality, utility, and clarity of the information to be collected;

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, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

*Title:* ''Consolidated Child Restraint System Registration, Labeling and Defect Notifications.''

*OMB Control Number:* 2127–0576.

*Requested Expiration Date of Approval:* Three years from the approval date.

*Type of Request:* Revision of a currently approved collection.

*Affected Public:* Businesses, Individuals and Households.

*Summary of the Collection of Information:*

Child restraint manufacturers are required to provide an owner registration card for purchasers of child restraint systems in accordance with title 49 of the Code of Federal Regulations (CFR), part 571, section 213, ''Child restraint systems.'' The registration card is required to be perforated into two parts. The top part (information part) contains a message and suitable instructions to be retained by the purchaser. The size, font, color, and layout of the top part are currently prescribed in Figures 9a and 9b,[226] as is the attachment method (fold/perforation) of the information card to the lower part of the form (the mail-in card). The top part of the registration card sets forth: (a) prescribed wording advising the consumer of the importance of registering; (b) prescribed instructions on how to register; and (c) prescribed statements that the mail-in card is pre-addressed and that postage is already paid.

The bottom part (the mail-in card) is to be returned to the manufacturer by the purchaser. The bottom part includes prepaid return postage, the pre-printed name/address of the manufacturer, the pre-printed model and date of manufacture, and spaces for the purchaser to fill in his/her name and address. Optionally, child restraint manufacturers are permitted to add to the registration form: (a) Specified statements informing CRS owners that they may register online; (b) the internet address for registering with the company; (c) revisions to statements reflecting use of the internet to register; and (d) a space for the consumer's email address.

Child restraint manufacturers are also required to provide printed instructions with new CRSs, with step-by-step information on how the restraint is to be used, and a permanently attached label that gives ''quick look'' information on matters such as use instructions and information on registering the CRS.

Under this final rule, the agency is amending the requirements that prescribe wording advising the consumer of the importance of registering their CRS and instructing how to register. NHTSA is adopting changes to stop prescribing the wording. Instead, CRS manufacturers are given leeway to use their own words to convey the importance of registering the CRS and to instruct how registration is achieved. NHTSA will allow statements instructing consumers to use electronic (or any other means) of registering, as long as instructions are provided on using the paper card for registering (including that the mail-in card is pre-addressed and that the postage is pre-paid). NHTSA will allow other means of electronic registration other than a web address, such as a QR code, tine URL, or similar.

In this final rule, the agency is also removing restrictions on manufacturers on their use of size, font, color, layout, and attachment method of the information card portion. NHTSA is continuing a current provision that prohibits any other information unrelated to the registration of the CRS, such as advertising or warranty information.

With the changes to the information card adopted in this final rule, NHTSA anticipates a change to the hour burden or costs associated with the revised information card, labels and printed instructions. Child restraint systems manufacturers produce, on average, a total of approximately 16,000,000 child restraint systems per year. NHTSA estimates there are 38 CRS manufacturers with 159 distinct CRS models.

The hour burden associated with the revised label consists of the child restraint manufacturer: (a) designing the information card with statements to instruct how to register, encourage registration and optionally, how to register electronically and how the submitted information will be used; and (b) updating this information on the existing information card, label and printed instructions. NHTSA assumes for purposes of this analysis that each manufacturer would design the registration information on the information card, label and printed instructions 5 times per year, whether it is to use different registration card designs in different CRS models or to adapt the design to improve registrations. The agency estimates 50 hours of additional burden per child restraint manufacturer for the designing of the registration card (information card portion), labels and printed instructions that no longer have prescribed text (50 hours × 5 designs/year × 38 CRS manufacturers = 9,599 hours annually).

*Estimated Additional Annual Burden:* 9,500 hours.

The burden of designing labels and printed instruction is minimal. CRS manufacturers use templates to include in their CRSs. The design of the basic label design is adjusted with necessary changes based on the different models. Specific CRS labels can readily be created through editing of text and insertion of updated diagrams. Therefore, there is no new annualized burden associated with label and instruction development.

[226] Prescribed in FMVSS No. 213, ''Child restraint systems.'' As discussed in this preamble, this NPRM proposes to relieve some of those restrictions.

Comments are invited on: Whether the described collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques of other forms of information technology.

You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document. You may call the Docket at (202) 366–9826. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that two copies of the comment be provided.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. 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).

*Incorporation by Reference*

In updating the standard seat assembly used in the FMVSS No. 213 frontal test, NHTSA incorporates by reference a drawing package titled, ''Parts List and Drawings, NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2021, Child Frontal Impact Sled'' dated March 2023, into FMVSS No. 213 (49 CFR 571.213). The drawing package consists of detailed drawings and other materials related to the standard seat assembly referenced in this final rule. Interested persons could use the drawing package to manufacture the standard seat assembly for their own use if they wished to do so.

NHTSA has placed a copy of the drawing package in the docket for this final rule. Interested parties can download a copy of the drawing package or view the materials on-line by accessing *www.Regulations.gov*.

This final rule also removes an incorporation by reference of SAE Recommended Practice J211, ''Instrumentation for Impact Tests,'' revised 1980, and replaces it with the 1995 version of J211 (J211/1) in FMVSS No. 213 and FMVSS No. 213b (49 CFR 571.213b). The SAE J211/1 standard provides guidelines and recommendations for techniques of measurements used in impact tests to achieve uniformity in instrumentation practice and in reporting results. Signals from impact tests have to be filtered following the standard's guidelines to eliminate noise from sensor signals. Following J211/1 guidelines provides a basis for meaningful comparisons of test results from different sources. This final rule amends 49 CFR 571.5 to remove the reference to § 571.213 from the SAE recommended practice J211, ''Instrumentation for Impact Tests,'' revised 1980. Interested parties can obtain a copy of the SAE Recommended Practice J211/1 ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' from SAE International, 400 Commonwealth Drive, Warrendale, PA 15096. Telephone: (724) 776–4841, website: *www.sae.org*.

This final rule also incorporates by reference the standard ASTM D3574–11 ''Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams'' in FMVSS No. 213b. ASTM D3574 is a standard method for testing flexible cellular urethane and polyurethane foams. ASTM D3574 is used to measure and evaluate flexible foam properties, including: density and indentation force deflection (IFD).

This final rule incorporates by reference ASTM D1056–07, Standard Specification for Flexible Cellular Materials-Sponge or Expanded Rubber, into FMVSS No. 213b. ASTM D1056–07 is a standard for cellular materials, both Sponge (Open Cell) and Expanded (Closed Cell). ASTM D1056 specifies several different procedures for testing flexible cellular materials. The tests include a compression deflection test, accelerated aging tests, compression-deflection tests, an oil-immersion test (open-cell sponge); fluid immersion tests (closed cell); a water absorption test; density tests; and a low-temperature flex test.

Interested parties can obtain a copy of the ASTM standards from ASTM International at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA. Telephone: (877) 909–2786, website: *www.astm.org/*.

This final rule incorporates by reference the American Association of Textile Chemists and Colorists (AATCC) Gray Scale for Color Change. AATCC Gray Scale for Color Change is used for assessing color change during color fastness testing. The scale is used for visual assessment to enable users to specify a rating from 1 to 5. Interested parties can obtain the AATCC Gray Scale for Color Change at PO Box 12215 Research Triangle Park, NC, USA. Telephone: (919) 549–8141, website: *www.aatcc.org/*.

This final rule incorporates by reference Drawing No. 210–5000–1(L), –2(R), Leg Assembly. The drawing shows the assembly and parts of the 3-year-old dummy (49 CFR part 572, subpart P) dummy's legs. The drawing can be found in Docket No. NHTSA–2001–11171–0004 in *www.regulations.gov* (*https://www.regulations.gov/document/NHTSA-2001-11171-0004*).

The following standards appear in the amendatory text of this document and were previously approved for the locations in which they appear: Drawing Package, SAS–100–1000, Standard Seat Belt Assembly with Addendum A, Seat Base Weldment (consisting of drawings and a bill of materials), October 23, 1998; and Drawing Package, ''NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2003,'' (consisting of drawings and a bill of materials), June 3, 2003.

*Severability*

The issue of severability of FMVSSs is addressed in 49 CFR 571.9. It provides that if any FMVSS or its application to any person or circumstance is held invalid, the remainder of the part and the application of that standard to other persons or circumstances is unaffected.

*Regulation Identifier Number*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You

may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

NHTSA has considered these questions and attempted to use plain language in writing this rule. Please inform the agency if you can suggest how NHTSA can improve its use of plain language.

*How do I submit confidential business information?*

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under Part 512. If you claim that any of the information or documents provided in your submission constitutes confidential business information within the meaning of 5 U.S.C. 552(b)(4) or are protected from disclosure pursuant to 18 U.S.C. 1905, you may either submit your request via email or request a secure file transfer link from the Office of the Chief Counsel contact listed below. You must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with Part 512, to the Office of the Chief Counsel. Do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters.

Your request must include a request letter that contains supporting information, pursuant to Part 512.8. Your request must also include a certificate, pursuant to Part 512.4(b) and Part 512, Appendix A.

You are required to submit one unredacted ''confidential version'' of the information for which you are seeking confidential treatment. Pursuant to Part 512.6, the words ''ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION'' or ''CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS'' (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: ''[ ].''

You are also required to submit one redacted ''public version'' of the information for which you are seeking confidential treatment. Pursuant to Part 512.5(a)(2), the redacted ''public version'' should include redactions of any information for which you are seeking confidential treatment (*i.e.,* the only information that should be unredacted is information for which you are not seeking confidential treatment). For questions about a request for confidential treatment, please contact Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov.*

## XVI. Appendices to the Preamble

### Appendix A to the Preamble: Reproducibility Test Results

EVENFLO EMBRACE 35—CRABI—INFANT—LA ONLY

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | RF angle |
|---|---|---|---|---|---|
| RR06–19–28 | 30.1 | 23.6 | 660 | 54.8 | 51 |
| RR06–19–29 | 30.0 | 23.5 | 632 | 54.6 | 51 |
| RR06–19–30 | 30.0 | 23.5 | 637 | 55.9 | 52 |
| Calspan | | St. Dev | 14.9 | 0.7 | 0.5 |
| | | Average | 642.8 | 55.1 | 51.4 |
| | | %CV | 2.3 | 1.3 | 0.9 |
| UFSSA117 | 29.8 | 21.2 | 609 | 51.2 | 55 |
| UFSSA118 | 29.7 | 21.1 | 640 | 55.0 | 53 |
| UFSSA119 | 29.8 | 21.2 | 602 | 50.9 | 57 |
| MCW | | St. Dev | 20.2 | 2.3 | 2.1 |
| | | Average | 617.1 | 52.4 | 55.0 |
| | | %CV | 3.3 | 4.4 | 3.8 |
| FR_RR1_24 | 29.4 | 20.9 | 566 | 53.7 | 47 |
| FR_RR1_26 | 29.4 | 21.1 | 617 | 58.7 | 44 |
| FR_RR1_28 | 29.4 | 21.0 | 556 | 48.6 | 45 |
| TRC | | St. Dev | 32.5 | 5.0 | 1.6 |
| | | Average | 579.7 | 53.7 | 45.4 |
| | | %CV | 5.6 | 9.4 | 3.4 |
| All Tests | | St. Dev | 34.3 | 3.0 | 4.4 |
| | | Average | 613.2 | 53.7 | 50.6 |
| | | %CV | 5.6 | 5.7 | 8.7 |

EVENFLO EMBRACE 35—CRABI—INFANT—SB3PT

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | RF angle |
|---|---|---|---|---|---|
| RR02–20–12 | 30.0 | 23.2 | 560 | 47.2 | 50 |
| RR02–20–13 | 29.7 | 22.9 | 567 | 46.9 | 52 |
| RR02–20–14 | 29.7 | 23.0 | 557 | 46.0 | 51 |
| Calspan | | St. Dev | 5.2 | 0.6 | 0.9 |
| | | Average | 561.2 | 46.7 | 51.2 |
| | | %CV | 0.9 | 1.3 | 1.7 |
| UFSSA210 | 29.3 | 21.7 | 667 | 52.0 | 54 |
| UFSSA211 | 29.6 | 21.8 | 627 | 49.7 | 54 |
| UFSSA212 | 29.3 | 21.6 | 623 | 52.3 | 52 |
| MCW | | St. Dev | 24.4 | 1.4 | 1.1 |
| | | Average | 639.0 | 51.3 | 53.6 |
| | | %CV | 3.8 | 2.7 | 2.0 |
| All Tests | | St. Dev | 45.4 | 2.7 | 1.6 |
| | | Average | 600.1 | 49.0 | 52.4 |
| | | %CV | 7.6 | 5.6 | 3.0 |

CHICCO KEY FIT—CRABI—INFANT—LA ONLY

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | RF angle |
|---|---|---|---|---|---|
| RR06–19–34 | 29.7 | 23.1 | 380 | 43.9 | 52 |
| RR06–20–27 | 29.6 | 23.1 | 347 | 43.9 | 50 |
| RR06–20–28 | 29.8 | 23.2 | 378 | 44.4 | 50 |
| Calspan | | St. Dev | 18.7 | 0.3 | 1.2 |
| | | Average | 368.1 | 44.1 | 51.0 |
| | | %CV | 5.1 | 0.7 | 2.3 |
| UFSSA120 | 29.8 | 21.4 | 466 | 45.1 | 53 |
| MCW | | | | | |
| FR_RR1_36 | 29.5 | 21.2 | 359 | 44.0 | 45 |
| TRC | | | | | |
| All Tests | | St. Dev | 46.7 | 0.5 | 3.3 |
| | | Average | 385.9 | 44.3 | 50.1 |
| | | %CV | 12.1 | 1.1 | 6.7 |
| | | SigmaL | 13.1 | | |

COSCO SCENERA NEXT—HIII 3YO—RF—LA ONLY

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | RF angle |
|---|---|---|---|---|---|
| RR02–20–09 | 30.0 | 23.2 | 394 | 42.7 | 66 |
| RR02–20–10 | 29.7 | 23.0 | 376 | 40.6 | 64 |
| RR02–20–11 | 29.7 | 23.0 | 386 | 39.7 | 67 |
| Calspan | | St. Dev | 9.4 | 1.5 | 1.3 |
| | | Average | 385.4 | 41.0 | 65.6 |
| | | %CV | 2.4 | 3.7 | 2.0 |
| UFSSA201 | 29.5 | 21.7 | 382 | 41.3 | 65 |
| UFSSA202 | 29.4 | 21.6 | 386 | 42.2 | 66 |
| UFSSA203 | 29.3 | 21.8 | 375 | 40.2 | 65 |

COSCO SCENERA NEXT—HIII 3YO—RF—LA ONLY—Continued

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | RF angle |
|---|---|---|---|---|---|
| MCW | | St. Dev | 5.8 | 1.0 | 0.6 |
| | | Average | 381.1 | 41.2 | 65.5 |
| | | %CV | 1.5 | 2.4 | 0.9 |
| FR_RR_PE_08 | 29.4 | 21.2 | 328 | 41.1 | 66 |
| FR_RR_PE_10 | 29.4 | 21.2 | 342 | 42.5 | 63 |
| FR_RR_PE_12 | 29.3 | 21.2 | 392 | 43.7 | 64 |
| TRC | | St. Dev | 33.7 | 1.3 | 1.6 |
| | | Average | 354.0 | 42.4 | 64.3 |
| | | %CV | 9.5 | 3.1 | 2.4 |
| All Tests | | St. Dev | 23.0 | 1.3 | 1.2 |
| | | Average | 373.5 | 41.6 | 65.2 |
| | | %CV | 6.2 | 3.1 | 1.9 |

GRACO MYRIDE 65—HIII 3YO—RF—TYPE 2

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | RF angle |
|---|---|---|---|---|---|
| RR06–19–25 | 29.7 | 23.2 | 558 | 51.0 | 52 |
| RR06–19–26 | 29.7 | 23.3 | 523 | 49.3 | 53 |
| RR06–19–27 | 29.9 | 23.4 | 531 | 50.0 | 53 |
| Calspan | | St. Dev | 18.5 | 0.9 | 0.6 |
| | | Average | 537.4 | 50.1 | 52.8 |
| | | %CV | 3.4 | 1.7 | 1.1 |
| UFSSA_111 | 29.8 | 21.3 | 432 | 47.4 | 61 |
| UFSSA_112 | 29.8 | 21.4 | 451 | 49.9 | 60 |
| UFSSA_113 | 29.7 | 21.2 | 459 | 49.7 | 61 |
| MCW | | St. Dev | 13.6 | 1.4 | 0.6 |
| | | Average | 447.5 | 49.0 | 60.5 |
| | | %CV | 3.0 | 2.9 | 1.0 |
| FR_RR1_02 | 29.5 | 21.2 | 475 | 48.5 | 62 |
| FR_RR1_04 | 29.5 | 21.1 | 494 | 48.8 | 54 |
| FR_RR1_06 | 29.5 | 21.0 | 494 | 50.2 | 55 |
| TRC | | St. Dev | 10.9 | 0.9 | 4.3 |
| | | Average | 487.9 | 49.2 | 56.9 |
| | | %CV | 2.2 | 1.9 | 7.5 |
| All Tests | | St. Dev | 41.0 | 1.1 | 4.0 |
| | | Average | 490.9 | 49.4 | 56.7 |
| | | %CV | 8.3 | 2.2 | 7.0 |

COSCO SCENERA NEXT—HIII 3YO—FF—LATCH

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| UFSSA139 | 30.0 | 21.3 | 382 | 36.9 | 603 | NA |
| UFSSA140 | 30.0 | 21.3 | 432 | 37.3 | 618 | 647 |
| UFSSA141 | 30.0 | 21.3 | 449 | 37.9 | 628 | 650 |
| MCW | | St. Dev. | 35.0 | 0.5 | 12.8 | 2.2 |
| | | Average | 420.9 | 37.4 | 616.3 | 648.5 |

COSCO SCENERA NEXT—HIII 3YO—FF—LATCH—Continued

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| | | %CV | 8.3 | 1.3 | 2.1 | 0.3 |
| FR_RR1_37 | 29.7 | 21.4 | 363 | 38.9 | 593 | NA |
| FR_RR1_38 | 29.6 | 21.3 | 384 | 40.4 | 591 | NA |
| FR_RR1_39 | 29.6 | 21.2 | 369 | 40.8 | 594 | NA |
| TRC | | St. Dev. | 10.8 | 1.0 | 1.4 | |
| | | Average | 372.0 | 40.1 | 592.6 | |
| | | %CV | 2.9 | 2.5 | 0.2 | |
| All Tests | | St. Dev. | 35.4 | 1.6 | 15.4 | |
| | | Average | 396.5 | 38.7 | 604.5 | |
| | | %CV | 8.9 | 4.2 | 2.5 | |

HARMONY DEFENDER 360—HIII 3YO—FF—TYPE 2&T

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR02–20–08 | 29.9 | 23.1 | 499 | 49.1 | 593 | NA |
| Calspan | | | | | | |
| UFSSA142 | 30.1 | 21.3 | 328 | 44.3 | 579 | 689 |
| UFSSA143 | 30.1 | 21.3 | 347 | 45.6 | 569 | 684 |
| UFSSA144 | 30.0 | 21.2 | 343 | 43.3 | 568 | 682 |
| MCW | | St. Dev. | 10.5 | 1.2 | 5.9 | 3.5 |
| | | Average | 339.4 | 44.4 | 572.2 | 685.1 |
| | | %CV | 3.1 | 2.6 | 1.0 | 0.5 |
| FR_RR_PE_02 | 29.2 | 21.2 | 400 | 42.8 | 560 | 660 |
| FR_RR_PE_06 | 29.3 | 21.2 | 373 | 41.8 | 570 | 674 |
| TRC | | | | | | |
| All Tests | | St. Dev. | 62.9 | 2.6 | 11.4 | 11.1 |
| | | Average | 381.7 | 44.5 | 573.3 | 678.0 |
| | | %CV | 16.5 | 5.9 | 2.0 | 1.6 |
| | | SigmaL | 9.8 | | | |

BRITAX MARATHON CLICKTIGHT—HIII 6YO—FF—LA ONLY

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR06–19–38 | 29.6 | 23.3 | 652 | 40.6 | 775 | 859 |
| RR02–20–01 | 29.9 | 23.3 | 708 | 40.8 | 828 | 880 |
| RR02–20–02 | 29.9 | 23.3 | 741 | 44.4 | 801 | 869 |
| Calspan | | St. Dev. | 45.4 | 2.1 | 26.6 | 10.5 |
| | | Average | 700.3 | 41.9 | 801.2 | 869.4 |
| | | %CV | 6.5 | 5.1 | 3.3 | 1.2 |
| UFSSA138 | 29.9 | 21.2 | 771 | 43.8 | 764 | 819 |
| MCW | | | | | | |
| FR_RR1_31 | 29.4 | 21.2 | 697 | 46.7 | 808 | 876 |
| TRC | | | | | | |
| All Tests | | St. Dev. | 45.2 | 2.6 | 25.9 | 24.7 |
| | | Average | 713.8 | 43.3 | 795.2 | 860.7 |
| | | %CV | 6.3 | 6.0 | 3.3 | 2.9 |

EVENFLO SURERIDE—HIII 6YO—FF—LATCH

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| UFSSA129 | 29.7 | 21.2 | 359 | 42.4 | 681 | 787 |
| UFSSA130 | 29.9 | 21.2 | 434 | 45.0 | 635 | 785 |
| UFSSA131 | 29.8 | 21.2 | 373 | 45.1 | 664 | 791 |
| MCW | | St. Dev. | 40.0 | 1.5 | 23.4 | 3.1 |
| | | Average | 389.0 | 44.2 | 660.0 | 787.6 |
| | | %CV | 10.3 | 3.4 | 3.5 | 0.4 |
| FR_RR1_25 | 29.4 | 21.1 | 366 | 42.7 | 649 | 773 |
| FR_RR1_27 | 29.4 | 21.0 | 334 | 42.6 | 648 | 772 |
| FR_RR1_29 | 29.5 | 21.2 | 359 | 42.9 | 638 | 765 |
| TRC | | St. Dev. | 17.1 | 0.1 | 6.2 | 4.6 |
| | | Average | 353.1 | 42.7 | 644.7 | 770.0 |
| | | %CV | 4.8 | 0.3 | 1.0 | 0.6 |
| All Tests | | St. Dev. | 33.8 | 1.2 | 17.5 | 10.2 |
| | | Average | 371.0 | 43.4 | 652.4 | 778.8 |
| | | %CV | 9.1 | 2.9 | 2.7 | 1.3 |

GRACO NAUTILUS 65—HIII 6YO—FF—TYPE 2

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR04–19–01 | 29.4 | 22.8 | 456 | 44.6 | 648 | 732 |
| RR04–19–04 | 30.1 | 23.3 | 490 | 45.6 | 669 | 732 |
| RR05–19–09 | 29.8 | 23.5 | 474 | 45.7 | 666 | 742 |
| Calspan | | St. Dev. | 16.8 | 0.6 | 11.5 | 5.4 |
| | | Average | 473.4 | 45.3 | 660.8 | 735.4 |
| | | %CV | 3.5 | 1.3 | 1.7 | 0.7 |
| UFSSA_105 | 29.7 | 21.2 | 534 | 41.1 | 672 | 732 |
| UFSSA_106 | 29.8 | 21.4 | 587 | 44.3 | 675 | 742 |
| UFSSA_110 | 29.9 | 21.3 | 548 | 45.5 | 666 | 735 |
| MCW | | St. Dev. | 27.5 | 2.3 | 4.6 | 5.2 |
| | | Average | 556.4 | 43.6 | 671.2 | 736.1 |
| | | %CV | 4.9 | 5.2 | 0.7 | 0.7 |
| FR_RR1_01 | 29.5 | 21.2 | 565 | 44.9 | 690 | 751 |
| FR_RR1_03 | 29.5 | 21.1 | 550 | 46.6 | 676 | 737 |
| FR_RR1_05 | 29.5 | 21.0 | 574 | 45.9 | 692 | 752 |
| TRC | | St. Dev. | 12.2 | 0.9 | 8.4 | 8.5 |
| | | Average | 562.8 | 45.8 | 685.9 | 746.5 |
| | | %CV | 2.2 | 1.9 | 1.2 | 1.1 |
| All Tests | | St. Dev. | 46.5 | 1.6 | 13.2 | 7.8 |
| | | Average | 530.9 | 44.9 | 672.6 | 739.3 |
| | | %CV | 8.8 | 3.5 | 2.0 | 1.1 |

COSCO PRONTO HB—HIII 6YO—BPSB—TYPE 2

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR05–19–13 | 29.9 | 23.3 | 650 | 58.7 | 528 | 613 |
| RR05–19–14 | 29.9 | 23.3 | 621 | 51.9 | 525 | 605 |
| RR05–19–15 | 29.9 | 23.3 | 663 | 52.5 | 533 | 613 |
| Calspan | | St. Dev. | 21.6 | 3.8 | 4.3 | 4.3 |
| | | Average | 645.1 | 54.4 | 528.7 | 610.1 |
| | | %CV | 3.4 | 7.0 | 0.8 | 0.7 |
| UFSSA135 | 29.9 | 21.1 | 550 | 49.8 | 551 | 593 |
| UFSSA136 | 30.0 | 21.2 | 604 | 47.0 | 517 | 600 |

COSCO PRONTO HB—HIII 6YO—BPSB—TYPE 2—Continued

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| UFSSA137 | 29.9 | 21.2 | 534 | 44.7 | 527 | 594 |
| MCW | | St. Dev. | 36.6 | 2.5 | 17.9 | 3.8 |
| | | Average | 562.7 | 47.2 | 531.6 | 595.4 |
| | | %CV | 6.5 | 5.4 | 3.4 | 0.6 |
| FR_RR1_19 | 29.2 | 20.7 | 573 | 45.4 | 566 | 617 |
| FR_RR1_21 | 29.3 | 20.8 | 606 | 45.3 | 568 | 619 |
| FR_RR1_23 | 29.4 | 20.9 | 566 | 46.2 | 564 | 611 |
| TRC | | St. Dev. | 21.1 | 0.5 | 2.1 | 4.4 |
| | | Average | 581.5 | 45.6 | 565.8 | 615.7 |
| | | %CV | 3.6 | 1.0 | 0.4 | 0.7 |
| All Tests | | St. Dev. | 44.3 | 4.7 | 20.1 | 9.8 |
| | | Average | 596.4 | 49.1 | 542.0 | 607.0 |
| | | %CV | 7.4 | 9.5 | 3.7 | 1.6 |

GRACO AFFIX—HIII6YO BPS—TYPE 2

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR04–19–05 | 29.5 | 23.0 | 457 | 52.3 | 463 | 602 |
| RR06–20–38 | 29.9 | 23.1 | 498 | 52.7 | 477 | 602 |
| RR06–20–39 | 29.9 | 23.1 | 464 | 50.7 | 474 | 605 |
| Calspan | | St. Dev | 22.2 | 1.0 | 7.5 | 1.5 |
| | | Average | 473.2 | 51.9 | 471.0 | 603.0 |
| | | %CV | 4.7 | 2.0 | 1.6 | 0.2 |
| UFSSA132 | 29.9 | 21.1 | 519 | 48.0 | 475 | 587 |
| UFSSA133 | 30.0 | 21.1 | 578 | 52.9 | 460 | 559 |
| UFSSA134 | 30.1 | 21.1 | 563 | 52.5 | 486 | 598 |
| MCW | | St. Dev | 30.5 | 2.7 | 12.9 | 20.5 |
| | | Average | 553.0 | 51.1 | 473.5 | 581.4 |
| | | %CV | 5.5 | 5.2 | 2.7 | 3.5 |
| FR_RR1_13 | 29.3 | 20.8 | 485 | 53.9 | 482 | 591 |
| FR_RR1_15 | 29.4 | 20.9 | 459 | 52.7 | 482 | 592 |
| FR_RR1_17 | 29.4 | 20.8 | 537 | 53.8 | 501 | 596 |
| TRC | | St. Dev | 40.0 | 0.7 | 11.1 | 2.4 |
| | | Average | 493.8 | 53.5 | 488.3 | 593.0 |
| | | %CV | 8.1 | 1.2 | 2.3 | 0.4 |
| All Tests | | St. Dev | 45.2 | 1.8 | 12.3 | 14.0 |
| | | Average | 506.7 | 52.2 | 477.6 | 592.4 |
| | | %CV | 8.9 | 3.5 | 2.6 | 2.4 |

HARMONY YOUTH NB—HIII 6YO—BPS—TYPE 2

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR04–19–06 | 29.6 | 23.1 | 489 | 50.6 | 462 | 600 |
| RR04–19–07 | 29.8 | 23.4 | 460 | 49.3 | 463 | 584 |
| RR05–19–08 | 29.8 | 23.3 | 463 | 49.4 | 453 | 579 |
| Calspan | | St. Dev | 16.0 | 0.7 | 5.2 | 10.7 |
| | | Average | 470.2 | 49.8 | 459.2 | 587.5 |
| | | %CV | 3.4 | 1.4 | 1.1 | 1.8 |
| UFSSA_107 | 29.7 | 21.3 | 493 | 49.5 | 468 | 578 |
| UFSSA_108 | 29.8 | 21.2 | 529 | 50.0 | 475 | 587 |
| UFSSA_109 | 29.6 | 21.2 | 536 | 51.2 | 476 | 587 |

HARMONY YOUTH NB—HIII 6YO—BPS—TYPE 2—Continued

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| MCW | | St. Dev | 23.2 | 0.8 | 4.5 | 5.1 |
| | | Average | 519.2 | 50.2 | 473.1 | 583.9 |
| | | %CV | 4.5 | 1.7 | 1.0 | 0.9 |
| FR_RR1_07 | 29.2 | 20.8 | 409 | 46.3 | 476 | 579 |
| FR_RR1_09 | 29.3 | 21.0 | 476 | 48.7 | 455 | 590 |
| FR_RR1_11 | 29.2 | 21.0 | 489 | 48.4 | 468 | 585 |
| TRC | | St. Dev | 43.3 | 1.3 | 10.8 | 5.3 |
| | | Average | 458.2 | 47.8 | 466.2 | 584.7 |
| | | %CV | 9.4 | 2.7 | 2.3 | 0.9 |
| All Tests | | St. Dev | 38.1 | 1.4 | 8.8 | 6.7 |
| | | Average | 482.6 | 49.3 | 466.2 | 585.4 |
| | | %CV | 7.9 | 2.9 | 1.9 | 1.1 |

BRITAX FRONTIER CLICKTIGHT—HIII 10YO—FF—TYPE 2&T

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR05–19–20 | 29.8 | 23.4 | n/a | 38.5 | 701 | 817 |
| RR05–19–21 | 29.8 | 23.4 | n/a | 43.6 | 701 | 840 |
| Calspan | | | | | | |
| UFSSA128 | 29.9 | 21.4 | n/a | 37.6 | 706 | 840 |
| MCW | | | | | | |
| FR_RR1_08 | 29.2 | 20.8 | n/a | 41.3 | 714 | 825 |
| FR_RR1_10 | 29.3 | 21.0 | n/a | 42.3 | 729 | 816 |
| FR_RR1_12 | 29.2 | 21.0 | n/a | 38.3 | 720 | 822 |
| TRC | | St. Dev | n/a | 2.1 | 7.2 | 4.4 |
| | | Average | n/a | 40.6 | 721.1 | 820.9 |
| | | %CV | n/a | 5.1 | 1.0 | 0.5 |
| All Tests | | St. Dev | n/a | 2.5 | 11.3 | 10.7 |
| | | Average | n/a | 40.2 | 711.9 | 826.6 |
| | | %CV | n/a | 6.1 | 1.6 | 1.3 |

EVENFLO BIG KID LX HB—HIII 10YO—BPS—TYPE 2

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR05–19–16 | 29.8 | 23.2 | n/a | 43.3 | 525 | 693 |
| RR05–19–17 | 29.9 | 23.3 | n/a | 42.6 | 518 | 644 |
| RR05–19–18 | 29.7 | 23.1 | n/a | 44.0 | 515 | 690 |
| Calspan | | St. Dev | n/a | 0.7 | 5.6 | 27.4 |
| | | Average | n/a | 43.3 | 519.2 | 675.6 |
| | | %CV | n/a | 1.6 | 1.1 | 4.1 |
| UFSSA121 | 29.6 | 21.0 | n/a | 45.7 | 560 | 709 |
| UFSSA122 | 29.7 | 21.1 | n/a | 47.0 | 540 | 712 |
| UFSSA123 | 29.7 | 21.2 | n/a | 43.9 | 549 | 696 |
| MCW | | St. Dev | n/a | 1.6 | 9.9 | 8.5 |
| | | Average | n/a | 45.6 | 549.7 | 705.3 |
| | | %CV | n/a | 3.5 | 1.8 | 1.2 |
| FR_RR1_14 | 29.3 | 20.8 | n/a | 42.5 | 557 | 671 |
| FR_RR1_16 | 29.4 | 20.9 | n/a | 43.2 | 562 | 669 |
| FR_RR1_18 | 29.4 | 20.8 | n/a | 43.3 | 556 | 671 |
| TRC | | St. Dev | n/a | 0.4 | 3.3 | 1.0 |

EVENFLO BIG KID LX HB—HIII 10YO—BPS—TYPE 2—Continued

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| | | Average | n/a | 43.0 | 558.4 | 670.6 |
| | | %CV | n/a | 1.0 | 0.6 | 0.1 |
| All Tests | | St. Dev | n/a | 1.5 | 18.8 | 21.7 |
| | | Average | n/a | 44.0 | 542.5 | 683.8 |
| | | %CV | n/a | 3.4 | 3.5 | 3.2 |

**Appendix B to the Preamble: Repeatability Test Results**

COSCO SCENERA NEXT—REAR-FACING—12-MONTH-OLD—LOWER ANCHOR ONLY INSTALLATION

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | RF angle |
|---|---|---|---|---|---|
| RR02–20–15 | 29.7 | 23.0 | 329 | 42.5 | 57 |
| RR02–20–16 | 29.8 | 23.1 | 336 | 42.1 | 59 |
| RR02–20–17 | 29.8 | 23.1 | 305 | 37.7 | 61 |
| Calspan | | St. Dev | 16.0 | 2.7 | 1.9 |
| | | Average | 323.2 | 40.7 | 59.1 |
| | | %CV | 5.0 | 6.6 | 3.3 |

MAXI COSI PRIA HIII—10-YEAR-OLD FORWARD-FACING CRS—TYPE 2 BELT INSTALLATION

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| RR02–20–21 | 29.9 | 23.5 | n/a | 48.3 | 747 | 798 |
| RR02–20–22 | 29.9 | 23.4 | n/a | 48.8 | 741 | 796 |
| RR02–20–23 | 29.8 | 23.2 | n/a | 45.3 | 735 | 781 |
| Calspan | | St. Dev | n/a | 1.9 | 5.7 | 9.3 |
| | | Average | n/a | 47.5 | 741.0 | 791.7 |
| | | %CV | n/a | 3.9 | 0.8 | 1.2 |

HARMONY YOUTH HIII–10-YEAR-OLD—BELT-POSITIONING SEAT—TYPE 2 BELT INSTALLATION

| Test No. | Sled velocity (mph) | Test acceleration (g) | HIC36 | Chest clip 3ms (g) | Head excursion (mm) | Knee excursion (mm) |
|---|---|---|---|---|---|---|
| FR_RR_PE_1 | 29.2 | 21.2 | n/a | 42.8 | 497 | 688 |
| FR_RR_PE_3 | 29.3 | 21.2 | n/a | 43.5 | 483 | 675 |
| FR_RR_PE_5 | 29.3 | 21.2 | n/a | 43.2 | 481 | 676 |
| TRC | | St. Dev | n/a | 0.4 | 9.1 | 7.0 |
| | | Average | n/a | 43.2 | 486.9 | 679.7 |
| | | %CV | n/a | 0.9 | 1.9 | 1.0 |

**List of Subjects in 49 CFR Part 571**

Imports, Incorporation by Reference, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Section 571.5 is amended by:

■ a. Adding paragraph (b)(3);

■ b. Revising paragraph (d)(16);

■ c. Redesignating paragraphs (d)(22) through (38) as paragraphs (d)(23) through (39);

■ d. Adding new paragraph (d)(22) and paragraphs (k)(6) and (7); and

■ e. Revising paragraphs (l)(3) and (4).

The additions and revisions read as follows:

**§ 571.5 Matter incorporated by reference.**

* * * * *

(b) * * *

(3) AATCC Evaluation Procedure (EP) 1–2007, Gray Scale for Color Change, reaffirmed 2007; into § 571.213b.

* * * * *

(d) * * *

(16) ASTM D1056–07, *Standard Specification for Flexible Cellular*

*Materials-Sponge or Expanded Rubber,* approved March 1, 2007; into §§ 571.213; 571.213b.

* * * * *

(22) ASTM D3574–11, *Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams,* approved December 1, 2011; into § 571.213b.

* * * * *

(k) * * *

(6) NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2021, *Parts List and Drawings, NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2021, Child Frontal Impact Sled,* March 2023; into § 571.213b.

(7) Drawing No. 210–5000–1 (L), –2(R), Leg Assembly, *Parts List and Drawings, Subpart P Hybrid III 3-year-old child crash test dummy, (H–III3C, Alpha version),* September 2001, Drawing No. 210–5000–1(L), –2(R), Leg Assembly; into § 571.213b.

(l) * * *

(3) SAE Recommended Practice J211, *Instrumentation for Impact Tests,* revised June 1980; into § 571.218.

(4) SAE Recommended Practice J211/1, *Instrumentation for Impact Tests—Part 1—Electronic Instrumentation;* revised March 1995; §§ 571.202a; 571.208; 571.213; 571.213a; 571.213b; 571.218; 571.403.

* * * * *

■ 3. Section 571.213 is amended by
■ a. Revising the section heading and S3;
■ b. Adding in alphabetical order a definition for ''school bus child restraint system'' to S4;
■ c. Revising the table to S5.1.3.1(a) and adding table 2 to S5.1.3.1(a);
■ d. Revising the introductory text to S5.3.1(b);
■ e. Adding S5.3.1(c) and S5.3.2.1;
■ f. Revising S5.5.2(f) and S5.5.2(g)(1)(i);
■ g. Removing and reserving S5.5.2(l)(2),
■ h. Revising the introductory text of S5.5.2(l)(3)(i), and S5.6.1.7; S5.6.1.11, S5.6.2.2, and S5.8.1(a);
■ i. Adding section S5.8.1.1;
■ j. Revising the introductory text of S5.8.2(a);
■ k. Adding section S5.8.2.1;
■ l. Revising S5.9(a), S6.1.1(a)(2)(i)(B), S6.1.1(a)(2)(ii)(G), S6.1.2(a)(1)(i)(B), and the introductory text of S10.2.3; and,
■ m. Adding figures 9a–2 and 9b–2 in alphanumeric order.

The revisions and additions read as follows:

**§ 571.213 Child restraint systems; Applicable unless a vehicle or child restraint system is certified to § 571.213b.**

* * * * *

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses, and to child restraint systems for use in motor vehicles and aircraft, manufactured before December 5, 2026. FMVSS No. 213b applies to child restraint systems manufactured on or after December 5, 2026.

S4. Definitions

* * * * *

*School bus child restraint system* means an add-on child restraint system (including a harness) manufactured and sold only for use on school bus seats, that has a label conforming with S5.3.1(b). (This definition applies to child restraint systems manufactured on or after December 5, 2024.)

* * * * *

TABLE 1 TO S5.1.3.1(a)—ADD-ON CHILD RESTRAINTS THAT CAN BE USED FORWARD-FACING MANUFACTURED BEFORE DECEMBER 5, 2024

| When this type of child restraint | Is tested in accordance with— | These excursion limits apply | Explanatory note: in the test specified in 2nd column, the child restraint is attached to the test seat assembly in the manner described below, subject to certain conditions |
|---|---|---|---|
| Harnesses and restraints designed for use by children with physical disabilities. | S6.1.2(a)(1)(i)(A) | Head 813 mm; Knee 915 mm. | Attached with lap belt; in addition, if a tether is provided, it is attached. |
| Harnesses labeled per S5.3.1(b)(i) through S5.3.1(b)(iii) and Figure 12. | S6.1.2(a)(1)(i)(A) | Head 813 mm; Knee 915 mm. | Attached with seat back mount. |
| Belt-positioning seats | S6.1.2(a)(1)(ii) | Head 813 mm; Knee 915 mm. | Attached with lap and shoulder belt; no tether is attached. |
| All other child restraints (*i.e.,* other than harnesses, restraints designed for use by children with physical disabilities, harnesses manufactured exclusively for school buses, and belt-positioning seats). | S6.1.2(a)(1)(i)(B) | Head 813 mm; Knee 915 mm. | Attached with a lap belt, without a tether attached; and,<br>Attached to lower anchorages of a child restraint anchorage system; no tether is attached. |
| All other child restraints (*i.e.,* other than harnesses, restraints designed for use by children with physical disabilities, harnesses labeled per S5.3.1(b)(i) through S5.3.1(b)(iii) and Figure 12, and belt-positioning seats). | S6.1.2(a)(1)(i)(A), S6.1.2(a)(1)(i)(C). | Head 720 mm; Knee 915 mm. | Attached with a lap belt, with a tether attached; and,<br>Attached to lower anchorages of child restraint anchorage system, with a tether attached. |

TABLE 2 TO S5.1.3.1(a)—ADD-ON CHILD RESTRAINTS THAT CAN BE USED FORWARD-FACING MANUFACTURED ON OR AFTER DECEMBER 5, 2024

| When this type of child restraint | Is tested in accordance with— | These excursion limits apply | Explanatory note: in the test specified in 2nd column, the excursion requirement must be met when the child restraint system is attached to the test seat assembly in the manner described below, subject to certain conditions |
|---|---|---|---|
| Harnesses and restraints designed for use by children with physical disabilities. | S6.1.2(a)(1)(i)(A) | Head 813 mm; Knee 915 mm. | Attached with lap and shoulder belt; in addition, if a tether is provided, it is attached. |
| School bus child restraint systems | S6.1.2(a)(1)(i)(A) | Head 813 mm; Knee 915 mm. | Attached with seat back mount, or, seat back, and, seat pan mounts. |

TABLE 2 TO S5.1.3.1(a)—ADD-ON CHILD RESTRAINTS THAT CAN BE USED FORWARD-FACING MANUFACTURED ON OR AFTER DECEMBER 5, 2024—Continued

| When this type of child restraint | Is tested in accordance with— | These excursion limits apply | Explanatory note: in the test specified in 2nd column, the excursion requirement must be met when the child restraint system is attached to the test seat assembly in the manner described below, subject to certain conditions |
|---|---|---|---|
| Booster seats | S6.1.2(a)(1)(ii) | Head 813 mm; Knee 915 mm. | Attached with lap and shoulder belt; no tether is attached. |
| Child restraints other than harnesses, restraints designed for use by children with physical disabilities, school bus child restraint systems, and booster seats. | S6.1.2(a)(1)(i)(B) | Head 813 mm; Knee 915 mm. | Attached with a lap belt; without a tether attached.<br>Attached to lower anchorages of child restraint anchorage system; with no tether attached. |
| Child restraints other than harnesses, restraints designed for use by children with physical disabilities, and school bus child restraint systems. | S6.1.2(a)(1)(i)(A), S6.1.2(a)(1)(i)(C). | Head 720 mm; Knee 915 mm. | Attached with a lap belt, with a tether attached.<br>Attached to lower anchorages of child restraint anchorage system, with a tether attached. |
| Child restraints equipped with a fixed or movable surface described in S5.2.2.2 that has belts that are not an integral part of that fixed or movable surface. | S6.1.2(a)(2) | Head 813 mm; Knee 915 mm. | Attached with lap belt, no tether is attached. |

* * * * *

S5.3.1 * * *

(b) School bus child restraint systems (including harnesses manufactured for use on school bus seats) must have a label that conforms in content to Figure 12 and to the requirements of S5.3.1(b)(1) through S5.3.1(b)(3) of this standard. The label must be permanently affixed to the part of the school bus child restraint system, that attaches the system to a vehicle seat back.

* * * * *

(c) The provision that add-on child restraint systems shall meet the requirements of this standard when installed solely by a Type 1 belt applies to child restraint systems manufactured before September 1, 2029. Except for harnesses, the requirement sunsets for child restraint systems manufactured on or after September 1, 2029. For harnesses, the requirement does not sunset and continues to apply to harnesses manufactured on or after September 1, 2029.

* * * * *

S5.3.2.1 School bus child restraint systems manufactured on or after December 5, 2024, shall be capable of meeting the requirements of this standard when installed by seat back mount, or, seat back mount and seat pan mount.

* * * * *

S5.5.2 * * *

(f) For child restraint systems manufactured before December 5, 2024, paragraph (f)(1) of this section applies. For child restraint systems manufactured on or after December 5, 2024, paragraph (f)(2) of this section applies.

(1) One of the following statements, as appropriate, inserting the manufacturer's recommendations for the maximum mass of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg. For child restraint systems that can only be used as belt-positioning seats, manufacturers must include the maximum and minimum recommended height, but may delete the reference to weight:

(i) Use only with children who weigh ____ pounds (____ kg) or less and whose height is (*insert values in English and metric units; use of word* ''*mass*'' *in label is optional*) or less; or

(ii) Use only with children who weigh between ____ and ____ pounds (*insert appropriate English and metric values; use of word* ''*mass*'' *is optional*) and whose height is (*insert appropriate values in English and metric units*) or less and who are capable of sitting upright alone; or

(iii) Use only with children who weigh between ____ and ____ pounds (*insert appropriate English and metric values; use of word* ''*mass*'' *is optional*) and whose height is (*insert appropriate values in English and metric units*) or less.

(iv) Use only with children who weigh between ____ and ____ pounds (*insert appropriate English and metric values; use of word* ''*mass*'' *is optional*) and whose height is between ____ and ____ (*insert appropriate values in English and metric units*).

(2) For child restraint systems manufactured on or after December 5, 2024: Statements or a combination of statements and pictograms specifying the manufacturer's recommendations for the mass and height ranges (in English and metric units) of children who can safely occupy the system in each applicable mode (rear-facing, forward-facing, booster), except manufacturers shall not recommend forward-facing use for child restraint systems with internal harnesses for children of masses less than 12 kg (26.5 lb), and shall not recommend booster seats for children of masses less than 18.4 kg (40 lb).

(g) * * *

(1) * * *

(i) As appropriate, the statements required by the following sections will be bulleted and placed after the statement required by 5.5.2(g)(1) in the following order: 5.5.2(k)(1), 5.5.2(h), 5.5.2(j), and 5.5.2(i). For child restraint systems manufactured on or after December 5, 2024, the statements required by 5.5.2(f) and 5.5.2(k)(2) need not be included.

* * * * *

(l) * * *

(3) * * *

(i) If the child restraint system is designed to meet the requirements of this standard when installed by the child restraint anchorage system according to S5.3.2, and if the sum of the weight of the child restraint system and the maximum child weight recommended for the child restraint when used with the restraint's internal harness or components is greater than 65 lb when used forward-facing or rear-facing, include the following statement

on this installation diagram: ''Do not install by this method for a child weighing more than *.'' At the manufacturer's option, ''*'' is the child weight limit in English units in accordance with S5.5.2(l)(3)(i)(A), (B) or (C). The corresponding child weight limit in metric units may also be included in the statement at the manufacturer's option.

* * * * *

S5.6.1.7(a) For child restraint systems manufactured before December 5, 2024, one of the following statements, inserting an address and a U.S. telephone number. If a manufacturer opts to provide a website on the registration card as permitted in Figure 9a of this section, the manufacturer must include the statement in paragraph S5.6.1.7(a)(2):

(1) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, email address if available (preceding four words are optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert a U.S. telephone number*). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov.*''

(2) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, email address if available (preceding four words are optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*) or register online at (*insert website for electronic registration form*). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov.*''

(b) For child restraint systems manufactured on or after December 5, 2024, the child restraint system shall include statements informing the owner of the importance of registering the child restraint for recall purposes and instructing the owner how to register the child restraint at least by mail and by telephone, providing a U.S. telephone number. The following statement must also be provided: ''For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov.*''

* * * * *

S5.6.1.11(a) For harnesses that are manufactured before December 5, 2024, for use on school bus seats, the instructions must include the following statement:

''WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants.'' The labeling requirement refers to a restrained occupant as: an occupant restrained by any user appropriate vehicle restraint or child restraint system (*e.g.,* lap belt, lap and shoulder belt, booster, child seat, harness . . .).

(b) For school bus child restraint systems manufactured on or after December 5, 2024, the instructions must include the following statement:

''WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants.'' (The instruction's reference to a ''restrained occupant'' refers to an occupant restrained by any user-appropriate vehicle restraint or child restraint system (*e.g.,* lap belt, lap and shoulder belt, booster seat or other child restraint system.)

* * * * *

S5.6.2.2(a) For child restraint systems manufactured before December 5, 2024, the instructions for each built-in child restraint system other than a factory-installed restraint, shall include one of the following statements, inserting an address and a U.S. telephone number. If a manufacturer opts to provide a website on the registration card as permitted in Figure 9a of this section, the manufacturer must include the statement in S5.6.2.2(a)(2):

(1) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, email address if available (preceding four words are optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert a U.S. telephone number*). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov.*''

(2) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, email address if available (preceding four words are optional), and the restraint's model number and manufacturing date to (*insert address*) or call (insert U.S. telephone number) or register online at (*insert website for electronic registration form*). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov.*''

(b) For child restraint systems manufactured on or after December 5, 2024, the instructions for each built-in child restraint system other than a factory-installed restraint shall include statements informing the owner of the importance of registering the child restraint for recall purposes and instructing the owner how to register the child restraint at least by mail and by telephone, providing a U.S. telephone number. The following statement must also be provided: ''For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov.*''

* * * * *

S5.8.1 * * *

(a) For child restraint systems manufactured before December 5, 2024, each child restraint system, except a factory-installed built-in restraint system, shall have a registration form attached to any surface of the restraint that contacts the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213.

* * * * *

S5.8.1.1 *Upgraded attached registration form.* For child restraint systems manufactured on or after December 5, 2024, each child restraint system, except a factory-installed built-in restraint system, shall have a registration form attached to any surface of the restraint that contacts the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213. The form shall not have advertising or any information other than that related to registering the child restraint system.

(a) Each attached registration form shall provide a mail-in postcard that conforms in size, and in basic content and format to the forms depicted in Figures 9a' and 9b' of this section.

(1) The mail-in postcard shall:

(i) Have a thickness of at least 0.007 inches and not more than 0.0095 inches;

(ii) Be pre-printed with the information identifying the child restraint system for recall purposes, such as the model name or number and date of manufacture (month, year) of the child restraint system to which the form is attached;

(iii) Contain space for the owner to record his or her name, mailing address, email address (optional), telephone number (optional), and other pertinent information;

(iv) Be addressed to the manufacturer, and be postage paid.

(v) Be detachable from the information card without the use of scissors or other tools.

(c) The registration form attached to the child restraint system shall also provide an information card with the following:

(1) Informing the owner of the importance of registering the child restraint system; and,

(2) Instructing the owner how to register the CRS.

(3) Manufacturers must provide statements informing the purchaser that the registration card is pre-addressed and that postage has been paid.

(4) Manufacturers may provide instructions to register the child restraint system electronically. If an electronic registration form is used or referenced, it must meet the requirements of S5.8.2 of this section.

(5) Manufacturers may optionally provide statements to the owner explaining that the registration card is not a warranty card, and that the information collected from the owner will not be used for marketing purposes

S5.8.2 * * *

(a) Each electronic registration form provided for child restraint systems manufactured before December 5, 2024, shall:

* * * * *

S5.8.2.1 *Upgraded electronic registration form*

(a) Each electronic registration form provided for child restraint systems manufactured on or after December 5, 2024, shall:

(1) Contain statements at the top of the form:

(i) Informing the owner of the importance of registering the CRS; and,

(ii) Instructing the owner how to register the CRS.

(2) Provide as required registration fields, space for the purchaser to record the model name or number and date of manufacture (month, year) of the child restraint system, and space for the purchaser to record his or her name and mailing address. At the manufacturer's option, a space is provided for the purchaser to optionally record his or her email address. At the manufacturer's option, a space is provided for the purchaser to optionally record his or her telephone number.

(b) No advertising or other information shall appear on the electronic registration form. However, manufacturers may optionally provide a statement to the owner explaining that the registration is not a warranty card, and that the information collected from the owner will not be used for marketing purposes.

(c) The electronic registration form may provide information identifying the manufacturer or a link to the manufacturer's home page, a field to confirm submission, and a prompt to indicate any incomplete or invalid fields prior to submission.

(d) If a manufacturer printed the electronic address (in form of a website (printed URL)) on the attached registration form provided pursuant to S5.8.1, the electronic registration form shall be accessed directly by the electronic address. Accessing the electronic address (in form of a website (printed URL) that contains the electronic registration form shall not cause additional screens or electronic banners to appear. In addition to the electronic address in form of a website, manufacturers may include a code (such as a QR code or similar) to access the electronic address.

S5.9 * * *

(a) Each add-on child restraint system other than a car bed, harness and belt-positioning seat, shall have components permanently attached to the system that enable the restraint to be securely fastened to the lower anchorages of the child restraint anchorage system specified in Standard No. 225 (§ 571.225) and depicted in Drawing Package SAS–100–1000, Standard Seat Belt Assembly with Addendum A or in Drawing Package, ''NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2003'' (both incorporated by reference, see § 571.5). The components must be attached by use of a tool, such as a screwdriver. In the case of rear-facing child restraints with detachable bases, only the base is required to have the components.

* * * * *

S6.1.1 * * *

(a) * * *

(2) * * *

(i) * * *

(B) The platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel frequency class as specified in SAE Recommended Practice J211/1, (incorporated by reference, see § 571.5). The accelerometer sensitive axis is parallel to the direction of test platform travel.

* * * * *

(ii) * * *

(G) All instrumentation and data reduction are in conformance with SAE Recommended Practice J211/1 (1995), ''Instrumentation for Impact Tests,'' (incorporated by reference, see § 571.5).

* * * * *

S6.1.2 * * *

(a) * * *

(1) * * *

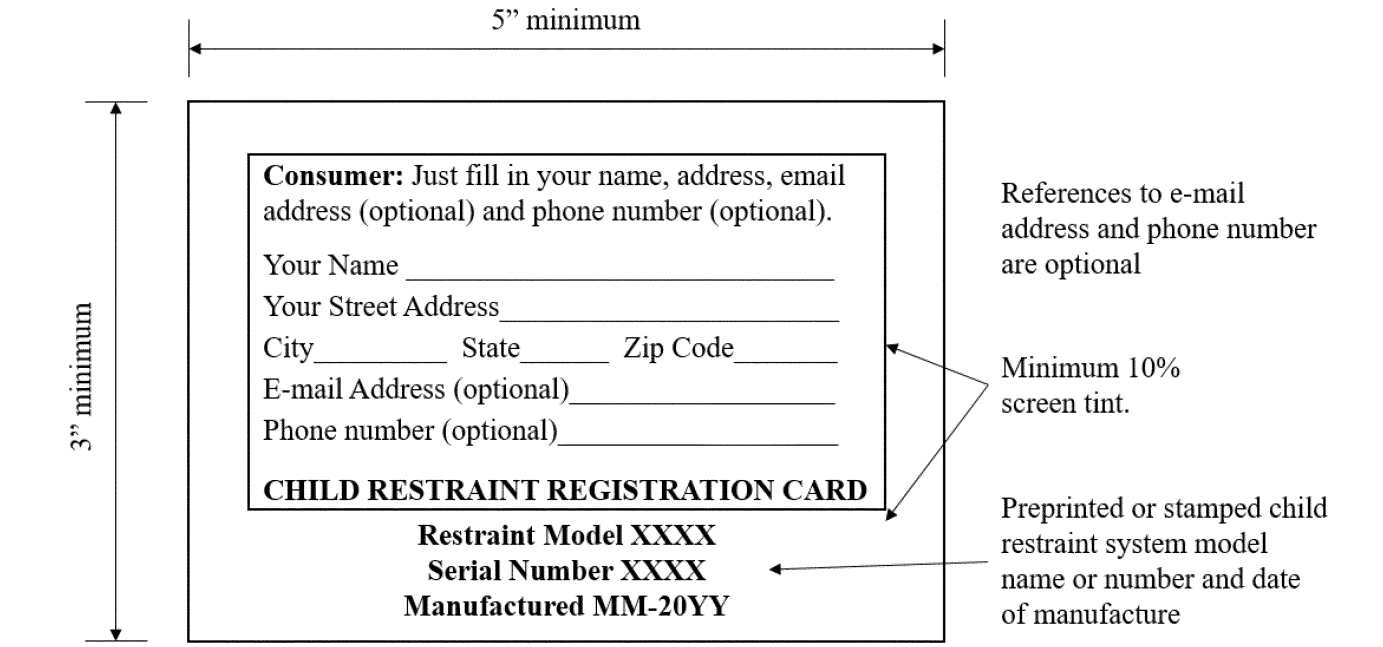
(i) * * *

(B) Except for a child harness, a school bus child restraint system, and a restraint designed for use by children with physical disabilities, install the child restraint system at the center seating position of the standard seat assembly as in S6.1.2(a)(1)(i)(A), except that no tether strap (or any other supplemental device) is used.

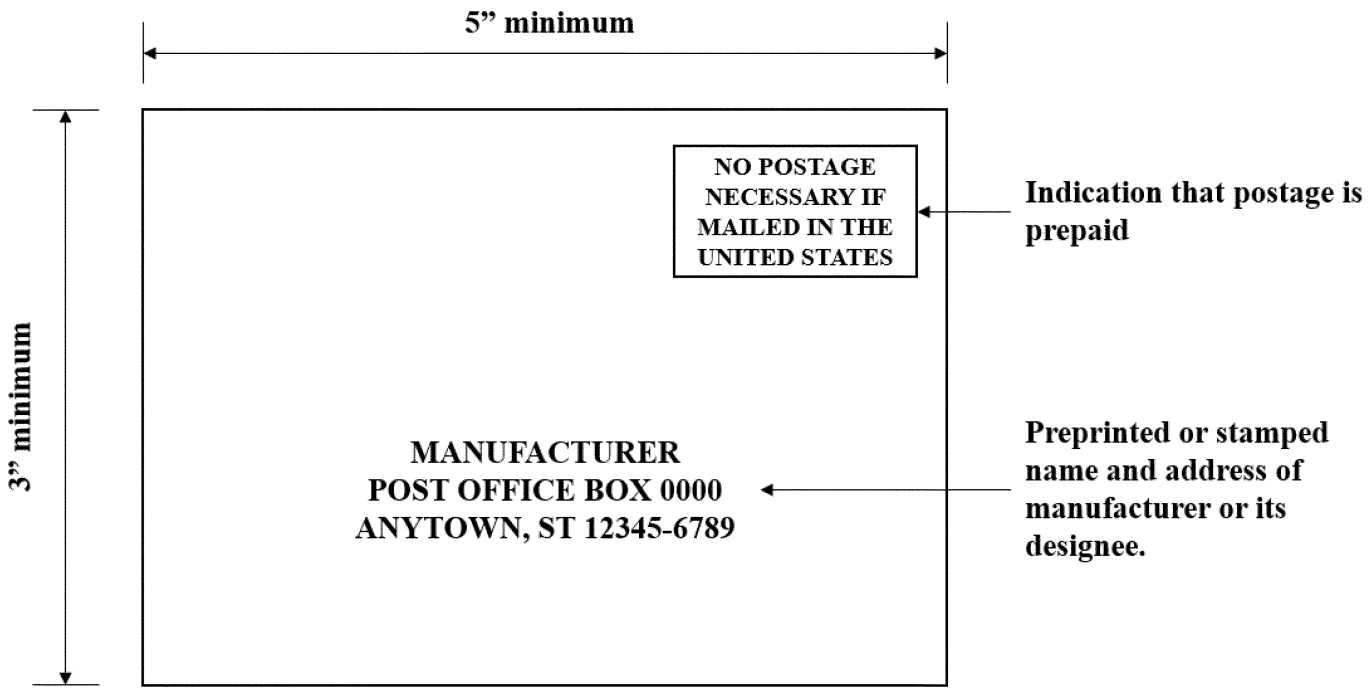
* * * * *

S10.2.3 *Hybrid III 6-year-old in belt-positioning seats, Hybrid III weighted 6-year-old in belt-positioning seats, and Hybrid III 10-year-old in belt-positioning seats.* When using the Hybrid III 6-year-old (part 572, subpart N), the Hybrid III weighted 6-year-old (part 572, subpart S), or the Hybrid III 10-year-old (part 572, subpart T) in belt-positioning seats, position the dummy in accordance with S5.6.1 or S5.6.2, while conforming to the following:

* * * * *




* * * * *




* * * * *

■ 4. Section 571.213b is added to read as follows:

**§ 571.213b Standard No. 213b; Child restraint systems; Mandatory applicability beginning December 5, 2026.**

S1. *Scope.* This standard specifies requirements for child restraint systems used in motor vehicles and aircraft.

S2. *Purpose.* The purpose of this standard is to reduce the number of children killed or injured in motor vehicle crashes and in aircraft.

S3. *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses, and to child restraint systems for use in motor vehicles and aircraft, manufactured on or after December 5, 2026.

S4. *Definitions—*

*Add-on child restraint system* means any portable child restraint system.

*Backless child restraint system* means a child restraint system, other than a belt-positioning seat, that consists of a seating platform that does not extend up to provide a cushion for the child's back or head and has a structural element designed to restrain forward motion of the child's torso in a forward impact.

*Belt-positioning seat* means a child restraint system that positions a child on a vehicle seat to improve the fit of a vehicle Type 2 belt system on the

child and that lacks any component, such as a belt system or a structural element, designed to restrain forward movement of the child's torso in a forward impact.

*Booster seat* means either a backless child restraint system or a belt-positioning seat.

*Built-in child restraint system* means a child restraint system that is designed to be an integral part of and permanently installed in a motor vehicle.

*Car bed* means a child restraint system designed to restrain or position a child in the supine or prone position on a continuous flat surface.

*Child restraint anchorage system* is defined in S3 of FMVSS No. 225 (§ 571.225).

*Child restraint system* means any device, except Type 1 or Type 2 seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children who weigh 36 kilograms (kg) (80 lb) or less.

*Contactable surface* means any child restraint system surface (other than that of a belt, belt buckle, or belt adjustment hardware) that may contact any part of the head or torso of the appropriate test dummy, specified in S7, when a child restraint system is tested in accordance with S6.1.

*Factory-installed built-in child restraint system* means a built-in child restraint system that has been or will be permanently installed in a motor vehicle before that vehicle is certified as a completed or altered vehicle in accordance with part 567 of this chapter.

*Harness* means a combination pelvic and upper torso child restraint system that consists primarily of flexible material, such as straps, webbing or similar material, and that does not include a rigid seating structure for the child.

*Rear-facing child restraint system* means a child restraint system, except a car bed, that positions a child to face in the direction opposite to the normal direction of travel of the motor vehicle.

*Representative aircraft passenger seat* means either a Federal Aviation Administration approved production aircraft passenger seat or a simulated aircraft passenger seat conforming to Figure 6.

*School bus child restraint system* means an add-on child restraint system (including a harness) manufactured and sold only for use on school bus seats, that has a label conforming with S5.3.1(b).

*Seat orientation reference line* or *SORL* means the horizontal line through Point Z as illustrated in Figure 1A–1 and 1A–2.

*Specific vehicle shell* means the actual vehicle model part into which the built-in child restraint system is or is intended to be fabricated, including the complete surroundings of the built-in system. If the built-in child restraint system is or is intended to be fabricated as part of any seat other than a front seat, these surroundings include the back of the seat in front, the interior rear side door panels and trim, the floor pan, adjacent pillars (*e.g.,* the B and C pillars), and the ceiling. If the built-in system is or is intended to be fabricated as part of the front seat, these surroundings include the dashboard, the steering mechanism and its associated trim hardware, any levers and knobs installed on the floor or on a console, the interior front side door panels and trim, the front seat, the floor pan, the A pillars and the ceiling.

*Tether anchorage* is defined in S3 of FMVSS No. 225 (§ 571.225).

*Tether hook* is defined in S3 of FMVSS No. 225 (§ 571.225).

*Tether strap* is defined in S3 of FMVSS No. 225 (§ 571.225).

*Torso* means the portion of the body of a seated anthropomorphic test dummy, excluding the thighs, that lies between the top of the child restraint system seating surface and the top of the shoulders of the test dummy.

S5. *Requirements.* (a) Each motor vehicle with a built-in child restraint system shall meet the requirements in this section when, as specified, tested in accordance with S6.1 and this paragraph.

(b)(1) Each child restraint system manufactured for use in motor vehicles shall meet the requirements in this section when, as specified, tested in accordance with S6.1 and this paragraph. Each add-on system shall meet the requirements at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (*e.g.,* forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

(2) Each add-on child restraint system manufactured for use in motor vehicles, that is recommended for children in a weight range that includes weights up to 18 kilograms (40 pounds) regardless of height, or for children in a height range that includes heights up to 1100 millimeters (mm) regardless of weight, shall meet the requirements in this standard and the applicable side impact protection requirements in Standard No. 213a (§ 571.213a).

(c) Each child restraint system manufactured for use in aircraft shall meet the requirements in this section and the additional requirements in S8.

(d) Each child restraint system tested with a part 572 subpart S dummy need not meet S5.1.2 and S5.1.3.

(e) Each child restraint system tested with a part 572 subpart T dummy need not meet S5.1.2.1(a).

(f) Each child restraint system that is equipped with an internal harness or other internal components to restrain the child need not meet this standard when attached to the lower anchors of the child restraint anchorage system on the standard seat assembly if the sum of the weight of the child restraint system (in pounds) and the average weight of child represented by the test dummy used to test the child restraint system in accordance with S7 of this standard, shown in the table below, exceeds 65 pounds. Such a child restraint system must meet this standard when tested using its internal harness or components to restrain such a test dummy while installed using the means of installation specified in S5.3.2 of this standard.

TABLE 1 TO S5(F)—AVERAGE WEIGHT OF CHILD REPRESENTED BY VARIOUS TEST DUMMIES

| Test dummy (specified in S7 of this standard) | Average weight of child represented by test dummy (pounds) |
|---|---|
| CRABI 12-month-old infant dummy (49 CFR Part 572, Subpart R) | 22 |
| Hybrid III 3-year-old dummy (49 CFR Part 572, Subpart P) | 31 |
| Hybrid III 6-year-old dummy (49 CFR Part 572, Subpart N) | 45 |
| Hybrid III 6-year-old weighted dummy (49 CFR Part 572 Subpart S) | 62 |
| Hybrid II 6-year-old dummy (49, CFR Part 572, Subpart I) | 45 |

(g) Each add-on child restraint system manufactured for use in motor vehicles, that is recommended for children in a weight range that includes weights less than 18 kilograms (40 pounds) regardless of height, or for children in a height range that includes heights less than 1100 millimeters regardless of weight, shall meet the requirements in this standard and the applicable side impact protection requirements in Standard No. 213a (§ 571.213a).

S5.1 *Dynamic performance.*

S5.1.1 *Child restraint system integrity.* When tested in accordance

with S6.1, each child restraint system shall meet the requirements of paragraphs (a) through (c) of this section.

(a) Exhibit no complete separation of any load bearing structural element and no partial separation exposing either surfaces with a radius of less than ¼ inch or surfaces with protrusions greater than ⅜ inch above the immediate adjacent surrounding contactable surface of any structural element of the system.

(b)(1) If adjustable to different positions, remain in the same adjustment position during the testing that it was in immediately before the testing, except as otherwise specified in paragraph (b)(2).

(2)(i) Subject to paragraph (b)(2)(ii) of this section, a rear-facing child restraint system may have a means for repositioning the seating surface of the system that allows the system's occupant to move from a reclined position to an upright position and back to a reclined position during testing.

(ii) No opening that is exposed and is larger than ¼ inch before the testing shall become smaller during the testing as a result of the movement of the seating surface relative to the restraint system as a whole.

(c) If a front facing child restraint system, not allow the angle between the system's back support surfaces for the child and the system's seating surface to be less than 45 degrees at the completion of the test.

S5.1.2 *Injury criteria.*

S5.1.2.1 When tested in accordance with S6.1 and with the test dummies specified in S7, each child restraint system shall:

(a) Limit the resultant acceleration at the location of the accelerometer mounted in the test dummy head such that, for any two points in time, t1 and t2, during the event which are separated by not more than a 36 millisecond time interval and where t1 is less than t2, the maximum calculated head injury criterion (HIC36) shall not exceed 1,000, determined using the resultant head acceleration at the center of gravity of the dummy head, a, expressed as a multiple of g (the acceleration of gravity), calculated using the expression below. The HIC calculation shall be calculated within the first 175 milliseconds of the sled acceleration that is within the acceleration corridor in Figure 2, when testing with the HIII–6YO dummy in a backless child restraint system.

Equation 1 to S5.1.2.1(a)

$$HIC = \left[ \frac{1}{(t_2 - t_1)} \int_{t_1}^{t_2} a\,dt \right]^{2.5} (t_2 - t_1)$$

(b) The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S5.1.2.2 [Reserved.]

S5.1.3 *Occupant excursion.* When tested in accordance with S6.1 and the requirements specified in this section, each child restraint system shall meet the applicable excursion limit requirements specified in S5.1.3.1–S5.1.3.3.

S5.1.3.1 *Child restraint systems other than rear-facing ones and car beds.* Each child restraint system, other than a rear-facing child restraint system or a car bed, shall retain the test dummy's torso within the system.

(a) For each add-on child restraint system:

(1) No portion of the test dummy's head shall pass through a vertical transverse plane that is 720 mm or 813 mm (as specified in the table in this S5.1.3.1) forward of point Z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B–1 and 1B–2 of this standard); and

(2) Neither knee pivot point shall pass through a vertical transverse plane that is 915 mm forward of point Z on the standard seat assembly, measured along the center SORL.

TABLE 2 TO S5.1.3.1(a)—ADD-ON CHILD RESTRAINTS THAT CAN BE USED FORWARD-FACING

| When this type of child restraint system | Is tested in accordance with— | These excursion limits apply | Explanatory note: in the test specified in 2nd column, the excursion requirement must be met when the child restraint system is attached to the test seat assembly in the manner described below, subject to certain conditions |
|---|---|---|---|
| Harnesses and restraints designed for use by children with physical disabilities. | S6.1.2(a)(1)(i)(A) | Head 813 mm; Knee 915 mm. | Attached with lap and shoulder belt; in addition, if a tether is provided, it is attached. |
| School bus child restraint systems | S6.1.2(a)(1)(i)(A) | Head 813 mm; Knee 915 mm. | Attached with seat back mount, or seat back and seat pan mounts. |
| Booster seats | S6.1.2(a)(1)(ii) | Head 813 mm; Knee 915 mm. | Attached with lap and shoulder belt; no tether is attached. |
| Child restraint systems other than harnesses, restraints designed for use by children with physical disabilities, school bus child restraint systems, and booster seats. | S6.1.2(a)(1)(i)(B) | Head 813 mm; Knee 915 mm. | Attached with a lap belt; without a tether attached.<br>Attached with a lap and shoulder belt; without a tether attached.<br>Attached to lower anchorages of child restraint anchorage system; without a tether attached. |

TABLE 2 TO S5.1.3.1(a)—ADD-ON CHILD RESTRAINTS THAT CAN BE USED FORWARD-FACING—Continued

| When this type of child restraint system | Is tested in accordance with— | These excursion limits apply | Explanatory note: in the test specified in 2nd column, the excursion requirement must be met when the child restraint system is attached to the test seat assembly in the manner described below, subject to certain conditions |
|---|---|---|---|
| Child restraint systems other than harnesses, restraints designed for use by children with physical disabilities, school bus child restraint systems. | S6.1.2(a)(1)(i)(A), S6.1.2(a)(1)(i)(C). | Head 720 mm; Knee 915 mm. | Attached with a lap belt, with a tether attached.<br>Attached with a lap and shoulder belt, with a tether attached.<br>Attached to lower anchorages of child restraint anchorage system, with a tether attached. |
| Child restraint systems equipped with a fixed or movable surface described in S5.2.2.2 that has belts that are not an integral part of that fixed or movable surface. | S6.1.2(a)(2) | Head 813 mm; Knee 915 mm. | Attached with lap belt or lap and shoulder belt or lower anchorages of child restraint anchorage system; no tether is attached. |

(b) In the case of a built-in child restraint system, neither knee pivot point shall, at any time during the dynamic test, pass through a vertical transverse plane that is 305 mm forward of the initial pre-test position of the respective knee pivot point, measured along a horizontal line that passes through the knee pivot point and is parallel to the vertical longitudinal plane that passes through the vehicle's longitudinal centerline.

S5.1.3.2 *Rear-facing child restraint systems.* In the case of each rear-facing child restraint system, all portions of the test dummy's torso shall be retained within the system and neither of the target points on either side of the dummy's head and on the transverse axis passing through the center of mass of the dummy's head and perpendicular to the head's midsagittal plane, shall pass through the transverse orthogonal planes whose intersection contains the forward-most and top-most points on the child restraint system surfaces (illustrated in Figure 1C in this section).

S5.1.3.3 *Car beds.* In the case of car beds, all portions of the test dummy's head and torso shall be retained within the confines of the car bed.

S5.1.4 *Back support angle.* When a rear-facing child restraint system is tested in accordance with S6.1, the angle between the system's back support surface for the child and the vertical shall not exceed 70 degrees.

S5.2 *Force distribution.*

S5.2.1 *Minimum head support surface—child restraint systems other than car beds.*

S5.2.1.1 Except as provided in S5.2.1.2, each child restraint system other than a car bed shall provide restraint against rearward movement of the head of the child (rearward in relation to the child) by means of a continuous seat back which is an integral part of the system and which—

(a) Has a height, measured along the system seat back surface for the child in the vertical longitudinal plane passing through the longitudinal centerline of the child restraint systems from the lowest point on the system seating surface that is contacted by the buttocks of the seated dummy, as follows:

TABLE 3 TO S5.2.1.1(a)

| Weight [1] | Height [2] (mm) |
|---|---|
| Not more than 18 kg | 500 |
| More than 18 kg | 560 |

[1] When a child restraint system is recommended under S5.5 for use by children of the above weights.

[2] The height of the portion of the system seat back providing head restraint shall not be less than the above.

(b) Has a width of not less than 8 inches, measured in the horizontal plane at the height specified in paragraph (a) of this section. Except that a child restraint system with side supports extending at least 4 inches forward from the padded surface of the portion of the restraint system provided for support of the child's head may have a width of not less than 6 inches, measured in the horizontal plane at the height specified in paragraph (a) of this section.

(c) Limits the rearward rotation of the test dummy head so that the angle between the head and torso of the dummy specified in S7 when tested in accordance with S6.1 is not more than 45 degrees greater than the angle between the head and torso after the dummy has been placed in the system in accordance with S6.1.2.3 and before the system is tested in accordance with S6.1.

S5.2.1.2 The applicability of the requirements of S5.2.1.1 to a front-facing child restraint system, and the conformance of any child restraint system other than a car bed to those requirements, is determined using the largest of the test dummies specified in S7 for use in testing that restraint, provided that the 6-year-old dummy described in subpart I or subpart N of part 572 of this title and the 10-year-old dummy described in subpart T of part 572 of this title, are not used to determine the applicability of or compliance with S5.2.1.1. A front facing child restraint system is not required to comply with S5.2.1.1 if the target point on either side of the dummy's head is below a horizontal plane tangent to the top of—

(a) The standard seat assembly, in the case of an add-on child restraint system, when the dummy is positioned in the system and the system is installed on the assembly in accordance with S6.1.2.

(b) The vehicle seat, in the case of a built-in child restraint system, when the system is activated and the dummy is positioned in the system in accordance with S6.1.2.

S5.2.2 *Torso impact protection.* Each child restraint system other than a car bed shall comply with the applicable requirements of S5.2.2.1 and S5.2.2.2.

S5.2.2.1 (a) The system surface provided for the support of the child's back shall be flat or concave and have a continuous surface area of not less than 85 square inches.

(b) Each system surface provided for support of the side of the child's torso shall be flat or concave and have a continuous surface of not less than 24 square inches for systems recommended for children weighing 20 pounds or more, or 48 square inches for systems recommended for children weighing less than 20 pounds.

(c) Each horizontal cross section of each system surface designed to restrain forward movement of the child's torso shall be flat or concave and each vertical longitudinal cross section shall be flat or convex with a radius of curvature of the underlying structure of not less than 2 inches.

S5.2.2.2 Each forward-facing child restraint system shall have no fixed or movable surface—

(a) Directly forward of the dummy and intersected by a horizontal line—

(1) Parallel to the SORL, in the case of the add-on child restraint system, or

(2) Parallel to a vertical plane through the longitudinal center line of the vehicle seat, in the case of a built-in child restraint system, and,

(b) Passing through any portion of the dummy, except for surfaces which restrain the dummy when the system is tested in accordance with S6.1.2(a)(2), so that the child restraint system shall conform to the requirements of S5.1.2 and S5.1.3.1.

S5.2.3 [Reserved]

S5.2.4 *Protrusion limitation.* Any portion of a rigid structural component within or underlying a contactable surface, or any portion of a child restraint system surface that is subject to the requirements of S5.2.3 shall, with any padding or other flexible overlay material removed, have a height above any immediately adjacent restraint system surface of not more than ⅜ inch and no exposed edge with a radius of less than ¼ inch.

S5.3 *Installation.*

S5.3.1 Add-on child restraint systems shall meet either (a) or (b), as appropriate.

(a) Except for components designed to attach to a child restraint anchorage system, each add-on child restraint system must not have any means designed for attaching the system to a vehicle seat cushion or vehicle seat back and any component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

(b) School bus child restraint systems (including harnesses manufactured for use on school bus seats) must have a label that conforms in content to Figure 12 and to the requirements of S5.3.1(b)(1) through S5.3.1(b)(3) of this standard. The label must be permanently affixed to the part of the school bus child restraint system, that attaches the system to a vehicle seat back.

(1) The label must be plainly visible when installed and easily readable.

(2) The message area must be white with black text. The message area must be no less than 20 square centimeters.

(3) The pictogram shall be gray and black with a red circle and slash on a white background. The pictogram shall be no less than 20 mm in diameter.

(c) The provision that add-on child restraint systems shall meet the requirements of this standard when installed solely by a Type 1 belt applies to child restraint systems manufactured before September 1, 2029. Except for harnesses, the requirement sunsets for child restraint systems manufactured on or after September 1, 2029. For harnesses, the requirement does not sunset and continues to apply to harnesses manufactured on or after September 1, 2029.

S5.3.2 Each add-on child restraint system shall be capable of meeting the requirements of this standard when installed solely by each of the means indicated in the following table for the particular type of child restraint system:

TABLE 4 FOR S5.3.2 MEANS OF INSTALLATION FOR CHILD RESTRAINT SYSTEMS

| Type of add-on child restraint system | Type 1 seat belt assembly plus a tether anchorage, if needed | Type 1 seat belt assembly | Type 2 seat belt assembly plus a tether anchorage, if needed | Type 2 seat belt assembly | Lower anchorages of the child restraint anchorage system plus a tether, if needed | Lower anchorages of the child restraint anchorage system | Seat back mount, or, seat back mount, and, seat pan mount |
|---|---|---|---|---|---|---|---|
| School bus child restraint systems | | | | | | | X |
| Harnesses | X | | | | | | |
| Car beds | | X | | X | | | |
| Rear-facing restraints | | X | | X | | X | |
| Booster seats | | | | X | | | |
| All other child restraint systems | X | X | X | X | X | X | |

S5.3.3 *Car beds.* Each car bed shall be designed to be installed on a vehicle seat so that the car bed's longitudinal axis is perpendicular to a vertical longitudinal plane through the longitudinal axis of the vehicle.

S5.4 *Belts, belt buckles, and belt webbing.*

S5.4.1 *Performance requirements.*

S5.4.1.1 [Reserved.]

S5.4.1.2 The webbing of belts provided with a child restraint system and used to attach the system to the vehicle or to restrain the child within the system shall—

(a) Have a minimum breaking strength for new webbing of not less than 15,000 N in the case of webbing used to secure a child restraint system to the vehicle, including the tether and lower anchorages of a child restraint anchorage system, and not less than 11,000 N in the case of the webbing used to secure a child to a child restraint system when tested in accordance with S5.1 of FMVSS No. 209. Each value shall be not less than the 15,000 N and 11,000 N applicable breaking strength requirements, but the median value shall be used for determining the retention of breaking strength in paragraphs (b)(1) and (c)(1) and (2) of this section. ''New webbing'' means webbing that has not been exposed to abrasion, light or micro-organisms as specified elsewhere in this section.

(b)(1) After being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 75 percent of the new webbing strength, when tested in accordance with S5.1(b) of FMVSS 209.

(2) A mass of 2.35 ±.05 kg shall be used in the test procedure in S5.1(d) of FMVSS 209 for webbing, including webbing to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system, except that a mass of 1.5 ±.05 kg shall be used for webbing in pelvic and upper torso restraints of a

belt assembly used in a child restraint system. The mass is shown as (B) in Figure 2 of FMVSS 209.

(c)(1) After exposure to the light of a carbon arc and tested by the procedure specified in S5.1(e) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 60 percent of the new webbing, and shall have a color retention not less than No. 2 on the AATCC Gray Scale for Color Change (incorporated by reference, see § 571.5).

(2) After being subjected to micro-organisms and tested by the procedures specified in S5.1(f) of FMVSS 209 (§ 571.209), shall have a breaking strength not less than 85 percent of the new webbing.

(d) If contactable by the test dummy torso when the system is tested in accordance with S6.1, have a width of not less than 1½ inches when measured in accordance with S5.4.1.3.

S5.4.1.3 *Width test procedure.* Condition the webbing for 24 hours in an atmosphere of any relative humidity between 48 and 67 percent, and any ambient temperature between 70° and 77 °F. Measure belt webbing width under a tension of 5 pounds applied lengthwise.

S5.4.2 *Belt buckles and belt adjustment hardware.* Each belt buckle and item of belt adjustment hardware used in a child restraint system shall conform to the requirements of S4.3(a) and S4.3(b) of FMVSS No. 209 (§ 571.209).

S5.4.3 *Belt Restraint.*

S5.4.3.1 *General.* Each belt that is part of a child restraint system and that is designed to restrain a child using the system shall be adjustable to snugly fit any child whose height and weight are within the ranges recommended in accordance with S5.5.2(f) and who is positioned in the system in accordance with the instructions required by S5.6.

S5.4.3.2 *Direct restraint.* Except for belt-positioning seats, each belt that is part of a child restraint system and that is designed to restrain a child using the system and to attach the system to the vehicle, and each Type 1 and lap portion of a Type 2 vehicle belt that is used to attach the system to the vehicle shall, when tested in accordance with S6.1, impose no loads on the child that result from the mass of the system, or—

(a) In the case of an add-on child restraint system, from the mass of the seat back of the standard seat assembly specified in S6.1, or

(b) In the case of a built-in child restraint system, from the mass of any part of the vehicle into which the child restraint system is built.

S5.4.3.3 *Seating systems.* Except for child restraint systems subject to S5.4.3.4, each child restraint system that is designed for use by a child in a seated position and that has belts designed to restrain the child, shall, with the test dummy specified in S7 positioned in the system in accordance with S10 provide:

(a) Upper torso restraint in the form of:

(i) Belts passing over each shoulder of the child, or

(ii) A fixed or movable surface that complies with S5.2.2.1(c), and

(b) Lower torso restraint in the form of:

(i) A lap belt assembly making an angle between 45° and 90° with the child restraint system seating surface at the lap belt attachment points, or

(ii) A fixed or movable surface that complies with S5.2.2.1(c), and

(c) In the case of each seating system recommended for children whose masses are more than 10 kg, crotch restraint in the form of:

(i) A crotch belt connectable to the lap belt or other device used to restrain the lower torso, or

(ii) A fixed or movable surface that complies with S5.2.2.1(c).

S5.4.3.4 *Harnesses.* Each child harness shall:

(a) Provide upper torso restraint, including belts passing over each shoulder of the child;

(b) Provide lower torso restraint by means of lap and crotch belt; and

(c) Prevent a child of any height for which the restraint is recommended for use pursuant to S5.5.2(f) from standing upright on the vehicle seat when the child is placed in the device in accordance with the instructions required by S5.6.

S5.4.3.5 *Buckle release.* Any buckle in a child restraint system belt assembly designed to restrain a child using the system shall:

(a) When tested in accordance with S6.2.1 prior to the dynamic test of S6.1, not release when a force of less than 40 newtons (N) is applied and shall release when a force of not more than 62 N is applied;

(b) After the dynamic test of S6.1, when tested in accordance with the appropriate sections of S6.2, release when a force of not more than 71 N is applied, provided, however, that the conformance of any child restraint system to this requirement is determined using the largest of the test dummies specified in S7 for use in testing that restraint when the restraint is facing forward, rearward, and/or laterally;

(c) Meet the requirements of S4.3(d)(2) of FMVSS No. 209 (§ 571.209), except that the minimum surface area for child restraint system buckles designed for push button application shall be 0.6 square inch;

(d) Meet the requirements of S4.3(g) of FMVSS No. 209 (§ 571.209) when tested in accordance with S5.2(g) of FMVSS No. 209; and

(e) Not release during the testing specified in S6.1.

S5.5 *Labeling.* Any labels or written instructions provided in addition to those required by this section shall not obscure or confuse the meaning of the required information or be otherwise misleading to the consumer. Any labels or written instructions other than in the English language shall be an accurate translation of English labels or written instructions.

S5.5.1 Each add-on child restraint system shall be permanently labeled with the information specified in S5.5.2(a) through (m).

S5.5.2 The information specified in paragraphs (a) through (m) of this section shall be stated in the English language and lettered in letters and numbers that are not smaller than 10 point type. Unless otherwise specified, the information shall be labeled on a white background with black text. Unless written in all capitals, the information shall be stated in sentence capitalization.

(a) The model name or number of the system.

(b) The manufacturer's name. A distributor's name may be used instead if the distributor assumes responsibility for all duties and liabilities imposed on the manufacturer with respect to the system by the National Traffic and Motor Vehicle Safety Act, as amended.

(c) The statement: ''Manufactured in ____,'' inserting the month and year of manufacture.

(d) The place of manufacture (city and State, or foreign country). However, if the manufacturer uses the name of the distributor, then it shall state the location (city and State, or foreign country) of the principal offices of the distributor.

(e) The statement: ''This child restraint system conforms to all applicable Federal motor vehicle safety standards.''

(f) Statements or a combination of statements and pictograms specifying the manufacturer's recommendations for the weight and height ranges (in English and metric units) of children who can safely occupy the system in each applicable mode (rear-facing, forward-facing, booster), except manufacturers shall not recommend that child restraint systems with internal harnesses be used forward-facing with children of weights less than 12 kg (26.5 lb), and shall not

recommend that booster seats be used by children of weights less than 18.4 kg (40 lb).

(g) The statements specified in paragraphs (1) and (2):

(1) A heading as specified in S5.5.2(k)(3)(i), with the statement ''WARNING! DEATH or SERIOUS INJURY can occur,'' capitalized as written and followed by bulleted statements in the following order:

(i) As appropriate, the statements required by the following sections will be bulleted and placed after the statement required by 5.5.2(g)(1) in the following order: 5.5.2(k)(1), 5.5.2(h), 5.5.2(j), and 5.5.2(i).

(ii) Secure this child restraint with the vehicle's child restraint anchorage system, if available, or with a vehicle belt. [For car beds, harnesses, and belt-positioning seats, the first part of the statement regarding attachment by the child restraint anchorage system is optional.] [For belt-positioning seats, the second part of the statement regarding attachment by the vehicle belt does not apply.] Child restraint systems equipped with internal harnesses to restrain the child and with components to attach to a child restraint anchorage system and for which the combined weight of the child restraint system and the maximum recommended child weight for use with internal harnesses exceeds 65 pounds, must be labeled with the following statement: ''Do not use the lower anchors of the child restraint anchorage system (LATCH system) to attach this child restraint when restraining a child weighing more than * [*insert a recommended weight value in English and metric units such that the sum of the recommended weight value and the weight of the child restraint system does not exceed 65 pounds (29.5 kg)*] with the internal harnesses of the child restraint.''

(iii) Follow all instructions on this child restraint and in the written instructions located (*insert storage location on the restraint for the manufacturer's installation instruction booklet or sheet*).

(iv) Register your child restraint with the manufacturer.

(2) At the manufacturer's option, the phrase ''DEATH or SERIOUS INJURY can occur'' in the heading can be on either a white or yellow background.

(3) More than one label may be used for the required bulleted statements. Multiple labels shall be placed one above the other unless that arrangement is precluded by insufficient space or shape of the child restraint system. In that case, multiple labels shall be placed side by side. When using multiple labels, the mandated warnings must be in the correct order when read from top to bottom. If the labels are side-by-side, then the mandated warnings must appear top to bottom of the leftmost label, then top to bottom of the next label to its right, and so on. There shall be no intervening labels and the required heading shall only appear on the first label in the sequence.

(h) In the case of each child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child: Snugly adjust the belts provided with this child restraint around your child.

(i)(1) For a booster seat that is recommended for use with either a vehicle's Type 1 or Type 2 seat belt assembly, one of the following statements, as appropriate:

(i) Use only the vehicle's lap and shoulder belt system when restraining the child in this booster seat; or,

(ii) Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child in this seat.

(2)(i) Except as provided in paragraph (i)(2)(ii) of this section, for a booster seat which is recommended for use with both a vehicle's Type 1 and Type 2 seat belt assemblies, the following statement: Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child with the (*insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt* (*e.g., shield*)), and only the vehicle's lap and shoulder belt system when using the booster without the (*insert above description*).

(ii) A booster seat which is recommended for use with both a vehicle's Type 1 and Type 2 seat belt assemblies is not subject to S5.5.2(i)(2)(i) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, such a booster shall be labeled with a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

(j) In the case of each child restraint system equipped with a top anchorage strap, the statement: Secure the top anchorage strap provided with this child restraint.

(k)(1) In the case of each rear-facing child restraint system that is designed for infants only, the statement: Use only in a rear-facing position when using it in the vehicle.

(2) [Reserved]

(3) Except as provided in (k)(4) of this section, each child restraint system that can be used in a rear-facing position shall have a label that conforms in content to Figure 10 and to the requirements of S5.5.2(k)(3)(i) through S5.5.2(k)(3)(iii) of this standard permanently affixed to the outer surface of the cushion or padding in or adjacent to the area where a child's head would rest, so that the label is plainly visible and easily readable.

(i) The heading area shall be yellow with the word ''warning'' and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm in diameter.

(4) If a child restraint system is equipped with a device that deactivates the passenger-side air bag in a vehicle when and only when the child restraint is installed in the vehicle and provides a signal, for at least 60 seconds after deactivation, that the air bag is deactivated, the label specified in Figure 10 may include the phrase ''unless air bag is off'' after ''on front seat with air bag.''

(l) An installation diagram showing the child restraint system installed in:

(1) A seating position equipped with a continuous-loop lap/shoulder belt;

(2) For child restraint systems manufactured before September 1, 2029, a seating position equipped with only a lap belt, as specified in the manufacturer's instructions; and

(3) A seating position equipped with a child restraint anchorage system. For child restraint systems the following paragraphs (l)(3)(i) and (ii) of this section apply, as appropriate.

(i) If the child restraint system is designed to meet the requirements of this standard when installed by the child restraint anchorage system according to S5.3.2, and if the sum of the weight of the child restraint system and the maximum child weight recommended for the child restraint system when used with the restraint's internal harness or components is greater than 65 lb when used forward-facing or rear-facing, include the following statement on this installation diagram: ''Do not install by this method for a child weighing more than *.'' At the manufacturer's option, ''*'' is the child weight limit in English units in accordance with S5.5.2(l)(3)(i)(A), (B), or (C). The corresponding child weight limit in metric units may also be

included in the statement at the manufacturer's option.

(A) For forward-facing and rear-facing child restraint systems, * is less than or equal to 65 minus child restraint system weight (pounds).

(B) For forward-facing child restraint systems, * is the child weight limit specified in the following table corresponding to the value CW, calculated as 65 minus child restraint system weight (pounds).

TABLE 5 TO S5.5.2(l)(3)(i)(B)—MAXIMUM CHILD WEIGHT LIMIT FOR LOWER ANCHOR USE FOR FORWARD-FACING CHILD RESTRAINT SYSTEM—ROUNDING

| CW = 65 − child restraint system weight (pounds) | Child weight limit "*" (pounds) |
|---|---|
| 20 < CW ≤ 25 | 25 |
| 25 < CW ≤ 30 | 30 |
| 30 < CW ≤ 35 | 35 |
| 35 < CW ≤ 40 | 40 |
| 40 < CW ≤ 45 | 45 |
| 45 < CW ≤ 50 | 50 |
| 50 < CW ≤ 55 | 55 |
| 55 < CW ≤ 60 | 60 |

(C) For rear-facing child restraint systems, * is the child weight limit specified in the following table corresponding to the value CW, calculated as 60 minus child restraint system weight (pounds).

TABLE 6 TO S5.5.2(l)(3)(i)(C)—MAXIMUM CHILD WEIGHT LIMIT FOR LOWER ANCHOR USE FOR REAR-FACING CHILD RESTRAINT SYSTEM—ROUNDING

| CW = 60 − child restraint system weight (pounds) | Child weight limit "*" (pounds) |
|---|---|
| 15 < CW ≤ 20 | 20 |
| 20 < CW ≤ 25 | 25 |
| 25 < CW ≤ 30 | 30 |
| 30 < CW ≤ 35 | 35 |
| 35 < CW ≤ 40 | 40 |
| 40 < CW ≤ 45 | 45 |
| 45 < CW ≤ 50 | 50 |
| 50 < CW ≤ 55 | 55 |

(ii) For child restraint systems designed to meet the requirements of this standard when installed forward-facing and rear-facing using the child restraint anchorage system according to S5.3.2, the following applies:

(A) If separate installation diagrams are provided for the child restraint system installed forward-facing and rear-facing, S5.5.2(l)(3)(i) applies to each of the installation diagrams.

(B) If only one installation diagram is provided and if a statement specifying a child weight limit is required in only rear-facing or forward-facing mode pursuant to S5.5.2(l)(3)(i), then the diagram shall depict installation in that mode along with the corresponding child weight limit in accordance with S5.5.2(l)(3)(i).

(C) If a statement specifying a child weight limit is required for the child restraint system installed forward-facing and rear-facing pursuant to S5.5.2(l)(3)(i) and only one installation diagram is provided, then the child weight limit shall be in accordance with S5.5.2(l)(3)(i)(A) or the lesser of the child weight limits described in S5.5.2(l)(3)(i)(B) and (C).

(m) Statements informing the owner of the importance of registering the child restraint system for recall purposes and instructing the owner how to register the child restraint system at least by both mail and telephone, providing a U.S. telephone number. The following statement must also be provided: ''For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov*.''

(n) Child restraint systems, other than belt-positioning seats, harnesses and backless child restraint systems, may be certified as complying with the provisions of S8. Child restraint systems that are so certified shall be labeled with the statement ''This Restraint is Certified for Use in Motor Vehicles and Aircraft.'' Belt-positioning seats, harnesses and backless child restraint systems shall be labeled with the statement ''This Restraint is Not Certified for Use in Aircraft.'' The statement required by this paragraph shall be in red lettering and shall be placed after the certification statement required by S5.5.2(e).

S5.5.3 The information specified in S5.5.2(f) through (l) shall be located on the add-on child restraint system so that it is visible when the system is installed as specified in S5.6.1, except that for child restraint systems with a detachable base, the installation diagrams specified in S5.5.2(l) are required to be visible only when the base alone is installed.

S5.5.4 (a) Each built-in child restraint system other than a factory-installed built-in restraint shall be permanently labeled with the information specified in S5.5.5 (a) through (l). The information specified in S5.5.5(a) through (j) and in S5.5.5(l) shall be visible when the system is activated for use.

(b) Each factory-installed built-in child restraint system shall be permanently labeled with the information specified in S5.5.5(f) through (j) and S5.5.5(l), so that the information is visible when the restraint is activated for use. The information shall also be included in the vehicle owner's manual.

S5.5.5 The information specified in paragraphs (a) through (l) of this section that is required by S5.5.4 for the built-in child restraint systems shall be in English and lettered in letters and numbers using a not smaller than 10-point type. Unless specified otherwise, the information shall be labeled on a white background with black text. Unless written in all capitals, the information shall be stated in sentence capitalization.

(a) The model name or number of the system.

(b) The manufacturer's name. A distributor's or dealer's name may be used instead if the distributor or dealer assumes responsibility for all duties and liabilities imposed on the manufacturer with respect to the system by the National Traffic and Motor Vehicle Safety Act, as amended.

(c) The statement: ''Manufactured in _____,'' inserting the month and year of manufacture.

(d) The place of manufacture (city and State, or foreign country). However, if the manufacturer uses the name of the distributor or dealer, then it shall state the location (city and State, or foreign country) of the principal offices of the distributor or dealer.

(e) The statement: ''This child restraint system conforms to all applicable Federal motor vehicle safety standards.''

(f) Statements or a combination of statements and pictograms specifying the manufacturer's recommendations for the weight and height ranges (in English and metric units) of children who can safely occupy the system in each applicable mode (rear-facing, forward-facing, booster), except manufacturers shall not recommend forward-facing child restraint systems with internal harnesses for children of weights less than 12 kg (26.5 lb), and shall not recommend booster seats for children of weights less than 18.4 kg (40 lb).

(g) The heading and statement specified in paragraph (1), and if appropriate, the statements in paragraph (2) and (3). If used, the statements in paragraphs (2) and (3) shall be bulleted and precede the bulleted statement required by paragraph (1) after the heading.

(1) A heading as specified in S5.5.2(k)(3)(i), with the statement ''WARNING! DEATH or SERIOUS INJURY can occur,'' capitalized as written and followed by the bulleted

statement: Follow all instructions on the child restraint and in the vehicle's owner's manual. At the manufacturer's option, the phrase ''DEATH or SERIOUS INJURY can occur'' in the heading can be on either a white or yellow background.

(2) In the case of each built-in child restraint system which is not intended for use in motor vehicles in certain adjustment positions or under certain circumstances, an appropriate statement of the manufacturers restrictions regarding those positions or circumstances.

(3) As appropriate, the statements required by the following sections will be bulleted and placed after the statement required by 5.5.5(g)(1) in the following order: 5.5.5(g)(2), 5.5.5(f), S5.5.5(h) and S5.5.5(i).

(h) In the case of each built-in child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child: Snugly adjust the belts provided with this child restraint around your child.

(i) In the case of each built-in child restraint which can be used in a rear-facing position, the following statement: Place an infant in a rear-facing position in this child restraint.

(j) A diagram or diagrams showing the fully activated child restraint system in infant and/or child configurations.

(k) One of the following statements, inserting an address and a U.S. telephone number. If a manufacturer opts to provide a website on the registration card as permitted in Figure 9a of this section, the manufacturer must include the statement in paragraph (k)(2) of this section:

(1) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, email address if available (preceding four words are optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert a U.S. telephone number*). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov.*''

(2) ''Child restraints could be recalled for safety reasons. You must register this restraint to be reached in a recall. Send your name, address, email address if available (preceding four words are optional), and the restraint's model number and manufacturing date to (*insert address*) or call (*insert telephone number*) or register online at (*insert website for electronic registration form*). For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *http://www.NHTSA.gov.*''

(l) In the case of a built-in belt-positioning seat that uses either the vehicle's Type 1 or Type 2 belt systems or both, a statement describing the manufacturer's recommendations for the maximum height and weight of children who can safely occupy the system and how the booster should be used (*e.g.,* with or without shield) with the different vehicle belt systems.

S5.6 *Printed instructions for proper use.* Any labels or written instructions provided in addition to those required by this section shall not obscure or confuse the meaning of the required information or be otherwise misleading to the consumer. Any labels or written instructions other than in the English language shall be an accurate translation of English labels or written instructions. Unless written in all capitals, the information required by S5.6.1 through S5.6.3 shall be stated in sentence capitalization.

S5.6.1 *Add-on child restraint systems.* Each add-on child restraint system shall be accompanied by printed installation instructions in English that provide a step-by-step procedure, including diagrams, for installing the system in motor vehicles, securing the system in the vehicles, positioning a child in the system, and adjusting the system to fit the child. For each child restraint system that has components for attaching to a tether anchorage or a child restraint anchorage system, the installation instructions shall include a step-by-step procedure, including diagrams, for properly attaching to that anchorage or system.

S5.6.1.1 In a vehicle with rear designated seating positions, the instructions shall alert vehicle owners that, according to accident statistics, children are safer when properly restrained in the rear seating positions than in the front seating positions.

S5.6.1.2 The instructions shall specify in general terms the types of vehicles, the types of seating positions, and the types of vehicle seat belts with which the add-on child restraint system can or cannot be used.

S5.6.1.3 The instructions shall explain the primary consequences of not following the warnings required to be labeled on the child restraint system in accordance with S5.5.2(g) through (k).

S5.6.1.4 The instructions for each car bed shall explain that the car bed should be positioned in such a way that the child's head is near the center of the vehicle.

S5.6.1.5 The instructions shall state that add-on child restraint systems should be securely belted to the vehicle, even when they are not occupied, since in a crash an unsecured child restraint system may injure other occupants.

S5.6.1.6 Each add-on child restraint system shall have a location on the restraint for storing the manufacturer's instructions.

S5.6.1.7 Child restraint systems shall include statements informing the owner of the importance of registering the child restraint system for recall purposes and instructing the owner how to register the child restraint system at least by mail and by telephone, providing a U.S. telephone number. The following statement must also be provided: ''For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov.*''

S5.6.1.8 In the case of each child restraint system that can be used in a position so that it is facing the rear of the vehicle, the instructions shall provide a warning against using restraints rear-facing at seating positions equipped with air bags, and shall explain the reasons for, and consequences of not following the warning. The instructions shall also include a statement that owners of vehicles with front passenger-side air bags should refer to their vehicle owner's manual for child restraint system installation instructions.

S5.6.1.9 In the case of each rear-facing child restraint system that has a means for repositioning the seating surface of the system that allows the system's occupant to move from a reclined position to an upright position during dynamic testing, the instructions shall include a warning against impeding the ability of the restraint to change adjustment position.

S5.6.1.10 (a) For instructions for a booster seat that is recommended for use with either a vehicle's Type 1 or Type 2 seat belt assembly, one of the following statements, as appropriate, and the reasons for the statement:

(1) Warning! Use only the vehicle's lap and shoulder belt system when restraining the child in this booster seat; or,

(2) Warning! Use only the vehicle's lap belt system, or the lap belt part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child in this seat.

(b)(1) Except as provided in S5.6.1.10(b)(2), the instructions for a booster seat that is recommended for use with both a vehicle's Type 1 and Type 2 seat belt assemblies shall include the following statement and the reasons therefor: Warning! Use only the vehicle's lap belt system, or the lap belt

part of a lap/shoulder belt system with the shoulder belt placed behind the child, when restraining the child with the (*insert description of the system element provided to restrain forward movement of the child's torso when used with a lap belt* (*e.g., shield*)), and only the vehicle's lap and shoulder belt system when using this booster without the (*insert above description*).

(2) A booster seat which is recommended for use with both a vehicle's Type 1 and Type 2 seat belt assemblies is not subject to S5.6.1.10(b)(1) if, when the booster is used with the shield or similar component, the booster will cause the shoulder belt to be located in a position other than in front of the child when the booster is installed. However, the instructions for such a booster shall include a warning to use the booster with the vehicle's lap and shoulder belt system when using the booster without a shield.

(c) The instructions for belt-positioning seats shall include the statement, ''This restraint is not certified for aircraft use,'' and the reasons for this statement.

S5.6.1.11 For school bus child restraint systems, the instructions must include the following statement:

''WARNING! This restraint must only be used on school bus seats. Entire seat directly behind must be unoccupied or have restrained occupants.'' (The instruction's reference to a ''restrained occupant'' refers to an occupant restrained by any user-appropriate vehicle restraint or child restraint system (*e.g.,* lap belt, lap and shoulder belt, booster seat or other child restraint system.)

S5.6.1.12 If the child restraint system is designed to meet the requirements of this standard when installed by the child restraint anchorage system according to S5.3.2, the installation diagram showing the child restraint system installed using a child restraint anchorage system must meet the specifications in S5.5.2(l)(3).

S5.6.2 *Built-in child restraint systems.* (a) Each built-in child restraint system shall be accompanied by printed instructions in English that provide a step-by-step procedure, including diagrams, for activating the restraint system, positioning a child in the system, adjusting the restraint and, if provided, the restraint harness to fit the child. The instructions for each built-in car bed shall explain that the child should be positioned in the bed in such a way that the child's head is near the center of the vehicle.

(b) Each motor vehicle equipped with a factory-installed built-in child restraint system shall have the information specified in paragraph (a) of this section included in its vehicle owner's manual.

S5.6.2.1 The instructions shall explain the primary consequences of not following the manufacturer's warnings for proper use of the child restraint system in accordance with S5.5.5(f) through (i).

S5.6.2.2 The instructions for each built-in child restraint system other than a factory-installed restraint shall include statements informing the owner of the importance of registering the child restraint system for recall purposes and instructing the owner how to register the child restraint system at least by mail and by telephone, providing a U.S. telephone number. The following statement must also be provided: ''For recall information, call the U.S. Government's Vehicle Safety Hotline at 1–888–327–4236 (TTY: 1–800–424–9153), or go to *www.NHTSA.gov.*''

S5.6.2.3 Each built-in child restraint system other than a factory-installed built-in restraint, shall have a location on the restraint for storing the instructions.

S5.6.2.4 Each built-in child restraint system, other than a system that has been installed in a vehicle or a factory-installed built-in system that is designed for a specific vehicle model and seating position, shall be accompanied by instructions in English that provide a step-by-step procedure for installing the system in a motor vehicle. The instructions shall specify the types of vehicles and the seating positions into which the restraint can or cannot be installed. The instructions for each car bed shall explain that the bed should be installed so that the child's head will be near the center of the vehicle.

S5.6.2.5 In the case of a built-in belt-positioning seat that uses either the vehicle's Type 1 or Type 2 belt systems or both, the instructions shall include a statement describing the manufacturer's recommendations for the maximum height and weight of children who can safely occupy the system and how the booster must be used with the vehicle belt systems appropriate for the booster seat. The instructions shall explain the consequences of not following the directions. The instructions shall specify that, if the booster seat is recommended for use with only the lap-belt part of a Type 2 assembly, the shoulder belt portion of the assembly must be placed behind the child.

S5.6.3 *Add-on and built-in child restraint systems.* In the case of each child restraint system that has belts designed to restrain children using them and which do not adjust automatically to fit the child, the printed instructions shall include the following statement: A snug strap should not allow any slack. It lies in a relatively straight line without sagging. It does not press on the child's flesh or push the child's body into an unnatural position.

S5.7 *Flammability.* Each material used in a child restraint system shall conform to the requirements of S4 of FMVSS No. 302 (571.302). In the case of a built-in child restraint system, the requirements of S4 of FMVSS No. 302 shall be met in both the ''in-use'' and ''stowed'' positions.

S5.8 Information requirements—attached registration form and electronic registration form.

S5.8.1 *Attached registration form.* (a) Each child restraint system, except a factory-installed built-in restraint system, shall have a registration form attached to any surface of the restraint that contacts the dummy when the dummy is positioned in the system in accordance with S6.1.2 of Standard 213. The form shall not have advertising or any information other than that related to registering the child restraint system.

(b) Each attached registration form shall provide a mail-in postcard that conforms in size, and in basic content and format to the forms depicted in Figures 9a' and 9b' of this section.

(1) The mail-in postcard shall:

(i) Have a thickness of at least 0.007 inches and not more than 0.0095 inches;

(ii) Be pre-printed with the information identifying the child restraint system for recall purposes, such as the model name or number and date of manufacture (month, year) of the child restraint system to which the form is attached;

(iii) Contain space for the owner to record his or her name, mailing address, email address (optional), telephone number (optional) and other pertinent information;

(iv) Be addressed to the manufacturer, and be postage paid.

(v) Be detachable from the information card without the use of scissors or other tools.

(c) The registration form attached to the child restraint system shall also provide an information card with the following:

(1) Informing the owner of the importance of registering the child restraint system; and,

(2) Instructing the owner how to register the CRS.

(3) Manufacturers must provide statements informing the purchaser that the registration card is pre-addressed and that postage has been paid.

(4) Manufacturers may provide instructions to register the child

restraint system electronically. If an electronic registration form is used or referenced, it must meet the requirements of S5.8.2 of this section.

(5) Manufacturers may optionally provide statements to the owner explaining that the registration card is not a warranty card, and that the information collected from the owner will not be used for marketing purposes.

S5.8.2 *Electronic registration form.* (a) Each electronic registration form must meet the requirements of this S5.8.2. Each form shall:

(1) Contain statements at the top of the form:

(i) Informing the owner of the importance of registering the CRS; and,

(ii) Instructing the owner how to register the CRS.

(2) Provide as required registration fields, space for the purchaser to record the model name or number and date of manufacture (month, year) of the child restraint system, and space for the purchaser to record his or her name and mailing address. At the manufacturer's option, a space is provided for the purchaser to optionally record his or her email address. At the manufacturer's option, a space is provided for the purchaser to optionally record his or her telephone number.

(b) No advertising or other information shall appear on the electronic registration form. However, manufacturers may optionally provide statements to the owner explaining that the registration is not for a warranty, and that the information collected from the owner will not be used for marketing purposes.

(c) The electronic registration form may provide information identifying the manufacturer or a link to the manufacturer's home page, a field to confirm submission, and a prompt to indicate any incomplete or invalid fields prior to submission.

(d) If a manufacturer printed the electronic address (in form of a website (printed URL)) on the attached registration form provided pursuant to S5.8.1, the electronic registration form shall be accessed directly by the electronic address. Accessing the electronic address (in form of a website (printed URL)) that contains the electronic registration form shall not cause additional screens or electronic banners to appear. In addition to the electronic address in the form of a website, manufacturers may include a code (such as QR code or similar) to access the electronic address.

S5.9 *Attachment to child restraint anchorage system.* (a) Each add-on child restraint system other than a car bed, harness and belt-positioning seat, shall have components permanently attached to the system that enable the restraint to be securely fastened to the lower anchorages of the child restraint anchorage system specified in Standard No. 225 (§ 571.225) and depicted in NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2021, (March 2023) (incorporated by reference, see § 571.5). The components must be attached by use of a tool, such as a screwdriver. In the case of rear-facing child restraint systems with detachable bases, only the base is required to have the components.

(b) In the case of each child restraint system that has components for attaching the system to a tether anchorage, those components shall include a tether hook that conforms to the configuration and geometry specified in Figure 11 of this standard.

(c) In the case of each child restraint system that has components, including belt webbing, for attaching the system to a tether anchorage or to a child restraint anchorage system, the belt webbing shall be adjustable so that the child restraint system can be tightly attached to the vehicle.

(d) Each child restraint system with components that enable the restraint to be securely fastened to the lower anchorages of a child restraint anchorage system, other than a system with hooks for attaching to the lower anchorages, shall provide either an indication when each attachment to the lower anchorages becomes fully latched or attached, or a visual indication that all attachments to the lower anchorages are fully latched or attached. Visual indications shall be detectable under normal daylight lighting conditions.

S6 *Test conditions and procedures.*

S6.1 *Dynamic systems test for child restraint systems.*

The test conditions described in S6.1.1 apply to the dynamic systems test. The test procedure for the dynamic systems test is specified in S6.1.2. The test dummy specified in S7 is placed in the test specimen (child restraint system), clothed as described in S9 and positioned according to S10.

S6.1.1 *Test conditions*—(a) *Test devices.* (1) Add-on child restraint systems. The test device for add-on child restraint systems is a standard seat assembly consisting of a simulated vehicle rear seat which is depicted in NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2021 (March 2023) (incorporated by reference; see § 571.5). The assembly is mounted on a dynamic test platform so that the center SORL of the seat is parallel to the direction of the test platform travel and so that movement between the base of the assembly and the platform is prevented. As illustrated in Figures 1A and 1B of this standard, attached to the seat belt anchorage points provided on the standard seat assembly is a Type 1 or a Type 2 seat belt assembly. The seat belt assembly meets the requirements of Standard No. 209 (§ 571.209) and has webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind. As illustrated in Figures 1A' and 1B' of this standard, attached to the standard seat assembly is a child restraint anchorage system conforming to the specifications of Standard No. 225 (§ 571.225). The indentation force deflection (IFD) characteristics of the seat pan cushion and seat back cushion are described in drawing numbers 3021–233 and 3021–248 in the NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2021, (March 2023) (incorporated by reference; see § 571.5); the IFD is measured on the full size cushion samples using the test methodology and apparatus described in ASTM Standard D3574–11 (incorporated by reference; see § 571.5) at 50% indentation.

(2) The test device for built-in child restraint systems is either the specific vehicle shell or the specific vehicle.

(i) *Specific vehicle shell.* (A) The specific vehicle shell, if selected for testing, is mounted on a dynamic test platform so that the longitudinal center line of the shell is parallel to the direction of the test platform travel and so that movement between the base of the shell and the platform is prevented. Adjustable seats are in the adjustment position midway between the forwardmost and rearmost positions, and if separately adjustable in a vertical direction, are at the lowest position. If an adjustment position does not exist midway between the forwardmost and rearmost position, the closest adjustment position to the rear of the midpoint is used. Adjustable seat backs are in the manufacturer's nominal design riding position. If such a position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an instrumented test dummy is used, the accelerometer surfaces in the dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle seat is equipped with adjustable head restraints, each is adjusted to its highest adjustment position.

(B) The platform is instrumented with an accelerometer and data processing system having a frequency response of 60 Hz channel frequency class as

specified in SAE Recommended Practice J211/1, (incorporated by reference, see § 571.5). The accelerometer sensitive axis is parallel to the direction of test platform travel.

(ii) *Specific vehicle.* For built-in child restraint systems, an alternate test device is the specific vehicle into which the built-in system is fabricated. The following test conditions apply to this alternate test device.

(A) The vehicle is loaded to its unloaded vehicle weight plus its rated cargo and luggage capacity weight, secured in the luggage area, plus the appropriate child test dummy and, at the vehicle manufacturer's option, an anthropomorphic test dummy which conforms to the requirements of subpart B or subpart E of part 572 of this title for a 50th percentile adult male dummy placed in the front outboard seating position. If the built-in child restraint system is installed at one of the seating positions otherwise requiring the placement of a part 572 test dummy, then in the frontal barrier crash specified in paragraph (c) of this section, the appropriate child test dummy shall be substituted for the part 572 adult dummy, but only at that seating position. The fuel tank is filled to any level from 90 to 95 percent of capacity.

(B) Adjustable seats are in the adjustment position midway between the forward-most and rearmost positions, and if separately adjustable in a vehicle direction, are at the lowest position. If an adjustment position does not exist midway between the forward-most and rearmost positions, the closest adjustment position to the rear of the midpoint is used.

(C) Adjustable seat backs are in the manufacturer's nominal design riding position. If a nominal position is not specified, the seat back is positioned so that the longitudinal center line of the child test dummy's neck is vertical, and if an anthropomorphic test dummy is used, the accelerometer surfaces in the test dummy's head and thorax, as positioned in the vehicle, are horizontal. If the vehicle is equipped with adjustable head restraints, each is adjusted to its highest adjustment position.

(D) Movable vehicle windows and vents are, at the manufacturer's option, placed in the fully closed position.

(E) Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

(F) Doors are fully closed and latched but not locked.

(G) All instrumentation and data reduction are in conformance with SAE Recommended Practice J211/1, (incorporated by reference, see § 571.5).

(b) The tests are frontal barrier impact simulations of the test platform or frontal barrier crashes of the specific vehicles as specified in S5.1 of § 571.208 and for:

(1) Test Configuration I, are at a velocity change of 48 km/h with the acceleration of the test platform entirely within the curve shown in Figure 2, or for the specific vehicle test with the deceleration produced in a 48 km/h frontal barrier crash.

(2) Test Configuration II, are set at a velocity change of 32 km/h with the acceleration of the test platform entirely within the curve shown in Figure 3, or for the specific vehicle test, with the deceleration produced in a 32 km/h frontal barrier crash.

(c) As illustrated in Figures 1A and 1B of this standard, attached to the seat belt anchorage points provided on the standard seat assembly are Type 1 or Type 2 seat belt assemblies. These seat belt assemblies meet the requirements of Standard No. 209 (§ 571.209) and have webbing with a width of not more than 2 inches, and are attached to the anchorage points without the use of retractors or reels of any kind. As illustrated in Figures 1A' and 1B' of this standard, attached to the standard seat assembly is a child restraint anchorage system conforming to the specifications of Standard No. 225 (§ 571.225).

(d)(1) When using the test dummy specified in 49 CFR part 572, subparts I and K, performance tests under S6.1 are conducted at any ambient temperature from 19 °C to 26 °C and at any relative humidity from 10 percent to 70 percent.

(2) When using the test dummies specified in 49 CFR part 572, subpart N, P, R or T, performance tests under S6.1 are conducted at any ambient temperature from 20.6 °C to 22.2 °C and at any relative humidity from 10 percent to 70 percent.

(e) In the case of add-on child restraint systems, the restraint shall meet the requirements of S5 at each of its seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (*e.g.,* forward, rearward or laterally) pursuant to S5.6, and tested with the test dummy specified in S7.

S6.1.2 *Dynamic test procedure.* (a) Activate the built-in child restraint system or attach the add-on child restraint system to the seat assembly in any of the following manners, at the agency's option.

(1) *Test configuration I.* (i) *Child restraint systems other than booster seats.* At the agency's option, attach the child restraint in any of the following manners specified in S6.1.2(a)(1)(i)(A) through (D), unless otherwise specified in this standard. The child restraint system must meet the requirements of the standard when attached in any of these manners, subject to S6.1.2.

(A) Install the child restraint system on the standard seat assembly, in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, except that, at the agency's option, the standard lap belt is used or the lap and shoulder belt is used. If provided, a tether strap may be used, but only if the manufacturer's instructions instruct consumers to use it. Attach the school bus child restraint system in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1, *e.g.,* the seat back mount or seat back and seat pan mount are used.

(B) Except for a child harness, a school bus child restraint system, and a restraint designed for use by children with physical disabilities, install the child restraint system on the standard seat assembly as in S6.1.2(a)(1)(i)(A), except that no tether strap (or any other supplemental device) is used.

(C) Install the child restraint system using the child restraint anchorage system on the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1. The tether strap, if one is provided, is attached to the tether anchorage.

(D) Install the child restraint system using only the lower anchorages of the child restraint anchorage system as in S6.1.2(a)(1)(i)(C). No tether strap (or any other supplemental device) is used.

(ii) *Booster seats.* A booster seat is placed on the standard seat assembly in accordance with the manufacturer's instructions provided with the system pursuant to S5.6.1. The booster seat is dynamically tested using only the standard vehicle lap and shoulder belt and no tether (or any other supplemental device). At NHTSA's option, the ATD Head Protection Device depicted in NHTSA Standard Seat Assembly; FMVSS No. 213, No. NHTSA–213–2021, (March 2023), (incorporated by reference, see § 571.5) can be used when testing backless child restraint systems. Place the booster seat on the standard seat assembly such that the center plane of the booster seat is parallel and aligned to the center plane of the standard seat assembly and the base of the booster seat is flat on the standard seat assembly cushion. Move the booster seat rearward on the standard seat assembly until some part

of the booster seat touches the standard seat assembly back. Keep the booster seat and the seating position center plane aligned as much as possible. Apply 133 N (30 pounds) of force to the front of the booster seat rearward into the standard seat assembly and release.

(iii) In the case of each built-in child restraint system, activate the restraint in the specific vehicle shell or the specific vehicle, in accordance with the manufacturer's instructions provided in accordance with S5.6.2.

(2) *Test configuration II.* (i) In the case of each add-on child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2, install the add-on child restraint system onto the standard seat assembly using only the standard seat lap belt or the lap and shoulder belt to secure the system to the standard seat, or at NHTSA's option, only the lower anchorages of the child restraint anchorage system. Do not attach the top tether.

(ii) In the case of each built-in child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2 that has belts that are not an integral part of that fixed or movable surface, activate the system in the specific vehicle shell or the specific vehicle in accordance with the manufacturer's instructions provided in accordance with S5.6.2.

(b) Select any dummy specified in S7 for testing systems for use by children of any height or any weight for which the system is recommended in accordance with S5.5. The dummy is assembled, clothed and prepared as specified in S7 and S9 and part 572 of this chapter, as appropriate.

(c) Place the dummy in the child restraint system. Position it, and attach the child restraint system belts, if appropriate, as specified in S10.

(d)(1) The belts of add-on systems other than belt-positioning seats are adjusted as follows.

(i) Shoulder and pelvic belts that directly restrain the dummy are adjusted as follows: Tighten the belt system used to restrain the child within the child restraint system to any tension of not less than 9 Newtons and not more than 18 Newtons on the webbing at the top of each dummy shoulder and the pelvic region.

(ii) All Type 1 or Type 2 belt systems used to attach an add-on child restraint system to the standard seat assembly are tightened to any tension of not less than 53.5 N and not more than 67 N. Tighten any provided additional anchorage belt (top tether) to any tension of not less than 45 Newtons and not more than 53.5 Newtons. All belt systems used to attach a school bus child restraint system are also tightened to any tension of not less than 53.5 N and not more than 67 N.

(iii) When using the child restraint anchorage system to attach the child restraint system to the standard seat assembly, tighten the belt systems of the lower anchorage attachments used to attach the restraint to the standard seat assembly to any tension of not less than 53.5 Newtons and not more than 67 Newtons and tighten the belt of the top tether attachment used to attach the restraint to the standard seat assembly to any tension of not less than 45 Newtons and not more than 53.5 Newtons.

(2) The belts of add-on belt-positioning seats are adjusted as follows.

(i) The lap portion of Type 2 belt systems used to restrain the dummy is tightened to a tension of not less than 9 N and not more than 18 N.

(ii) The shoulder portion of Type 2 belt systems used to restrain the dummy is tightened to a tension of not less than 9 N and not more than 18 N.

(3) The belts of built-in child restraint systems are adjusted as follows.

(i) The lap portion of Type 2 belt systems used to restrain the dummy is tightened to a tension of not less than 9 N and not more than 18 N.

(ii) The shoulder portion of Type 2 belt systems used to restrain the dummy is tightened to a tension of not less than 9 N and not more than 18 N.

(iii) For built-in child restraint systems, if provided, shoulder and pelvic belts that directly restrain the dummy are adjusted as follows. Tighten the belt system used to restrain the child within the child restraint system to any tension of not less than 9 Newtons and not more than 18 Newtons on the webbing at the top of each dummy shoulder and the pelvic region.

(e) Accelerate the test platform to simulate frontal impact in accordance with Test Configuration I or II, as appropriate.

(f) Determine conformance with the requirements in S5.1.

S6.2 *Buckle release test procedure.* The belt assembly buckles used in any child restraint system shall be tested in accordance with S6.2.1 through S6.2.4 inclusive.

S6.2.1 Before conducting the testing specified in S6.1, place the loaded buckle on a hard, flat, horizontal surface. Each belt end of the buckle shall be pre-loaded in the following manner. The anchor end of the buckle shall be loaded with a 9 N force in the direction away from the buckle. In the case of buckles designed to secure a single latch plate, the belt latch plate end of the buckle shall be pre-loaded with a 9 N force in the direction away from the buckle. In the case of buckles designed to secure two or more latch plates, the belt latch plate ends of the buckle shall be loaded equally so that the total load is 9 N, in the direction away from the buckle. For pushbutton-release buckles, the release force shall be applied by a conical surface (cone angle not exceeding 90 degrees). For pushbutton-release mechanisms with a fixed edge (referred to in Figure 7 as ''hinged button''), the release force shall be applied at the centerline of the button, 3 mm away from the movable edge directly opposite the fixed edge, and in the direction that produces maximum releasing effect. For pushbutton-release mechanisms with no fixed edge (referred to in Figure 7 as ''floating button''), the release force shall be applied at the center of the release mechanism in the direction that produces the maximum releasing effect. For all other buckle release mechanisms, the force shall be applied on the centerline of the buckle lever or finger tab in the direction that produces the maximum releasing effect. Measure the force required to release the buckle. Figure 7 illustrates the loading for the different buckles and the point where the release force should be applied, and Figure 8 illustrates the conical surface used to apply the release force to pushbutton-release buckles.

S6.2.2 After completion of the testing specified in S6.1 and before the buckle is unlatched, tie a self-adjusting sling to each wrist and ankle of the test dummy in the manner illustrated in Figure 4, without disturbing the belted dummy and the child restraint system.

S6.2.3 Pull the sling tied to the dummy restrained in the child restraint system and apply the following force: 50 N for a system tested with a newborn dummy (49 CFR part 572, subpart K); 90 N for a system tested with a 12-month-old dummy (49 CFR part 572, subpart R); 200 N for a system tested with a 3-year-old dummy (49 CFR part 572, subpart P); 270 N for a system tested with a 6-year-old dummy (49 CFR part 572, subpart N or I); 350 N for a system tested with a weighted 6-year-old dummy (49 CFR part 572, subpart S); or 437 N for a system tested with a 10-year-old dummy (49 CFR part 572, subpart T). The force is applied in the manner illustrated in Figure 4 and as follows:

(a) *Add-on child restraint systems.* For an add-on child restraint system other than a car bed, apply the specified force by pulling the sling horizontally and parallel to the SORL of the standard seat assembly. For a car bed, apply the force by pulling the sling vertically.

(b) *Built-in child restraint systems.* For a built-in child restraint systems other than a car bed, apply the force by pulling the sling parallel to the longitudinal centerline of the specific vehicle shell or the specific vehicle. In the case of a car bed, apply the force by pulling the sling vertically.

S6.2.4 While applying the force specified in S6.2.3, and using the device shown in Figure 8 for pushbutton-release buckles, apply the release force in the manner and location specified in S6.2.1, for that type of buckle. Measure the force required to release the buckle.

S6.3 [Reserved]

S7 *Test dummies.* (Subparts referenced in this section are of part 572 of this chapter.)

S7.1 *Dummy selection.* Select any dummy specified in S7.1.1, S7.1.2 or S7.1.3, as appropriate, for testing systems for use by children of the height (regardless of weight) or weight (regardless of height) for which the system is recommended in accordance with S5.5. A child restraint system that meets the criteria in two or more of the following paragraphs in S7 may be tested with any of the test dummies specified in those paragraphs.

S7.1.1 [Reserved]

S7.1.2 Child restraints systems are subject to the following provisions and S7.1.3.

(a) A child restraint system that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified weight range that includes any children having a weight of not greater than 5 kg (11 lb) regardless of height, or by children in a specified height range that includes any children whose height is not greater than 650 mm regardless of weight, is tested with a 49 CFR part 572 subpart K dummy (newborn infant dummy).

(b) A child restraint system that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified weight range that includes any children having a weight greater than 5 kg (11 lb) but not greater than 10 kg (22 lb) regardless of height, or by children in a specified height range that includes any children whose height is greater than 650 mm but not greater than 750 mm regardless of weight, is tested with a 49 CFR part 572 subpart K dummy (newborn infant dummy), and a part 572 subpart R dummy (CRABI 12-month-old test dummy).

(c) A child restraint system that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified weight range that includes any children having a weight greater than 10 kg (22 lb) but not greater than 13.6 kg (30 lb) regardless of height, or by children in a specified height range that includes any children whose height is greater than 750 mm but not greater than 870 mm regardless of weight, is tested with a part 572 subpart R dummy (CRABI 12-month-old test dummy), provided, however, that the CRABI 12-month-old dummy is not used to test a forward-facing child restraint system.

(d) A child restraint system that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified weight range that includes any children having a weight greater than 13.6 kg (30 lb) but not greater than 18.2 kg (40 lb) regardless of height, or by children in a specified height range that includes any children whose height is greater than 870 mm but not greater than 1100 mm regardless of weight, is tested with a 49 CFR part 572, subpart P dummy (Hybrid III 3-year-old dummy).

(e) A child restraint system that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified weight range that includes any children having a weight greater than 18.2 kg (40 lb) but not greater than 22.7 kg (50 lb) regardless of height, or by children in a specified height range that includes any children whose height is greater than 1100 mm but not greater than 1250 mm regardless of weight, is tested with a 49 CFR part 572, subpart N dummy (Hybrid III 6-year-old dummy).

(f) A child restraint system that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified weight range that includes any children having a weight greater than 22.7 kg (50 lb) but not greater than 30 kg (65 lb) regardless of height, or by children in a specified height range that includes any children whose height is greater than 1100 mm but not greater than 1250 mm regardless of weight, is tested with a 49 CFR part 572, subpart N dummy (Hybrid III 6-year-old dummy) and with a part 572, subpart S dummy (Hybrid III 6-year-old weighted dummy).

(g) A child restraint system that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified weight range that includes any children having a weight greater than 30 kg (65 lb) regardless of height, or by children in a specified height range that includes any children whose height is greater than 1250 mm regardless of weight, is tested with a 49 CFR part 572, subpart T dummy (Hybrid III 10-year-old dummy).

S8 *Requirements, test conditions, and procedures for child restraint systems manufactured for use in aircraft.* Each child restraint system manufactured for use in both motor vehicles and aircraft must comply with all of the applicable requirements specified in Section S5 and with the additional requirements specified in S8.1 and S8.2.

S8.1 *Installation instructions.* Each child restraint system manufactured for use in aircraft shall be accompanied by printed instructions in English that provide a step-by-step procedure, including diagrams, for installing the system in aircraft passenger seats, securing a child in the system when it is installed in aircraft, and adjusting the system to fit the child.

S8.2 *Inversion test.* When tested in accordance with S8.2.1 through S8.2.5, each child restraint system manufactured for use in aircraft shall meet the requirements of S8.2.1 through S8.2.6. The manufacturer may, at its option, use any seat which is a representative aircraft passenger seat within the meaning of S4. Each system shall meet the requirements at each of the restraint's seat back angle adjustment positions and restraint belt routing positions, when the restraint is oriented in the direction recommended by the manufacturer (*e.g.,* facing forward, rearward or laterally) pursuant to S8.1, and tested with the test dummy specified in S7. If the manufacturer recommendations do not include instructions for orienting the restraint in aircraft when the restraint seat back angle is adjusted to any position, position the restraint on the aircraft seat by following the instructions (provided in accordance with S5.6) for orienting the restraint in motor vehicles.

S8.2.1 A standard seat assembly consisting of a representative aircraft passenger seat shall be positioned and adjusted so that its horizontal and vertical orientation and its seat back angle are the same as shown in Figure 6.

S8.2.2 The child restraint system shall be attached to the representative aircraft passenger seat using, at the manufacturer's option, any Federal Aviation Administration approved aircraft safety belt, according to the restraint manufacturer's instructions for attaching the restraint to an aircraft seat. No supplementary anchorage belts or tether straps may be attached; however, Federal Aviation Administration approved safety belt extensions may be used.

S8.2.3 In accordance with S10, place in the child restraint system any dummy specified in S7 for testing systems for use by children of the heights and weights for which the system is

recommended in accordance with S5.5 and S8.1.

S8.2.4 If provided, shoulder and pelvic belts that directly restrain the dummy shall be adjusted in accordance with S6.1.2.

S8.2.5 The combination of representative aircraft passenger seat, child restraint system, and test dummy shall be rotated forward around a horizontal axis which is contained in the median transverse vertical plane of the seating surface portion of the aircraft seat and is located 25 mm below the bottom of the seat frame, at a speed of 35 to 45 degrees per second, to an angle of 180 degrees. The rotation shall be stopped when it reaches that angle and the seat shall be held in this position for three seconds. The child restraint system shall not fall out of the aircraft safety belt nor shall the test dummy fall out of the child restraint system at any time during the rotation or the three second period. The specified rate of rotation shall be attained in not less than one half second and not more than one second, and the rotating combination shall be brought to a stop in not less than one half second and not more than one second.

S8.2.6 Repeat the procedures set forth in S8.2.1 through S8.2.4. The combination of the representative aircraft passenger seat, child restraint system, and test dummy shall be rotated sideways around a horizontal axis which is contained in the median longitudinal vertical plane of the seating surface portion of the aircraft seat and is located 25 mm below the bottom of the seat frame, at a speed of 35 to 45 degrees per second, to an angle of 180 degrees. The rotation shall be stopped when it reaches that angle and the seat shall be held in this position for three seconds. The child restraint system shall not fall out of the aircraft safety belt nor shall the test dummy fall out of the child restraint system at any time during the rotation or the three second period. The specified rate of rotation shall be attained in not less than one half second and not more than one second, and the rotating combination shall be brought to a stop in not less than one half second and not more than one second.

S9 *Dummy clothing and preparation.*

S9.1 *Type of clothing.*

(a) *Newborn dummy (49 CFR part 572, subpart K).* When used in testing under this standard, the dummy is unclothed.

(b) [Reserved]

(c) *12-month-old dummy (49 CFR part 572, subpart R).* When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart R, is clothed in a cotton-polyester based tight fitting sweatshirt with long sleeves and ankle long pants whose combined weight is not more than 0.25 kg.

(d) [Reserved]

(e) *Hybrid III 3-year-old dummy (49 CFR part 572, subpart P).* When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart P, is clothed as specified in that subpart, except that the shoes are children's size 8 canvas oxford style sneakers weighing not more than 0.26 kg each.

(f) *Hybrid III 6-year-old dummy (49 CFR part 572, subpart N) and Hybrid III 6-year-old weighted dummy (49 CFR part 572, subpart S), and Hybrid III 10-year-old dummy (49 CFR part 572, subpart T).* When used in testing under this standard, the dummies specified in 49 CFR part 572, subparts N and S, are clothed as specified in subpart N and with child or youth size 13 M sneakers weighing not more than 0.45 kg each. When used in testing under this standard, the dummy specified in 49 CFR part 572, subpart T, is clothed as specified in subpart T and with youth size 3 sneakers weighing not more than 0.6 kg each.

S9.2 *Preparing clothing.* Clothing other than the shoes is machined-washed in 71 °C to 82 °C and machine-dried at 49 °C to 60 °C for 30 minutes.

S9.3 *Preparing dummies.* (Subparts referenced in this section are of part 572 of this chapter.)

S9.3.1 When using the test dummy conforming to subpart K, prepare the dummy as specified in this paragraph. Before being used in testing under this standard, the dummy must be conditioned at any ambient temperature from 19 °C to 25.5 °C and at any relative humidity from 10 percent to 70 percent, for at least 4 hours.

S9.3.2 When using the test dummies conforming to subparts N, P, R, S or T, prepare the dummies as specified in this paragraph. Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 20.6° to 22.2 °C and at any relative humidity from 10 percent to 70 percent, for at least 4 hours.

S10 *Positioning the dummy and attaching the system belts.*

S10.1 *Car beds.* Place the test dummy in the car bed in the supine position with its midsagittal plane perpendicular to the center SORL of the standard seat assembly, in the case of an add-on car bed, or perpendicular to the longitudinal axis of the specific vehicle shell or the specific vehicle, in the case of a built-in car bed. Position the dummy within the car bed in accordance with the instructions for child positioning that the bed manufacturer provided with the bed in accordance with S5.6.

S10.2 *Restraints other than car beds.*

S10.2.1 *Newborn dummy and 12-month-old dummy.* Position the test dummy according to the instructions for child positioning that the manufacturer provided with the system under S5.6.1 or S5.6.2, while conforming to the following:

(a) [Reserved]

(b) When testing rear-facing child restraint systems, place the newborn, or 12-month-old dummy in the child restraint system so that the back of the dummy torso contacts the back support surface of the system. For a child restraint system which is equipped with a fixed or movable surface described in S5.2.2.2 which is being tested under the conditions of test configuration II, do not attach any of the child restraint system belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint system belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2. If the dummy's head does not remain in the proper position, tape it against the front of the seat back surface of the system by means of a single thickness of 6 mm-wide paper masking tape placed across the center of the dummy's face.

(c) When testing rear-facing child restraint systems, extend the dummy's arms vertically upwards and then rotate each arm downward toward the dummy's lower body until the arm contacts a surface of the child restraint system or the standard seat assembly in the case of an add-on child restraint system, or the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system. Ensure that no arm is restrained from movement in other than the downward direction, by any part of the system or the belts used to anchor the system to the standard seat assembly, the specific shell, or the specific vehicle.

S10.2.2 *Other dummies generally.* When using: (1) the Hybrid III 3-year-old (part 572, subpart P), and Hybrid III weighted 6-year-old (part 572, subpart S) in child restraint systems including belt-positioning seats; (2) the Hybrid III 6-year-old (part 572, subpart N) and the Hybrid III 10-year-old (part 572, subpart

T) in child restraint systems other than belt-positioning seats, position the dummy in accordance with S5.6.1 or S5.6.2, while conforming to the following:

(a) Holding the test dummy torso upright until it contacts the system's design seating surface, place the test dummy in the seated position within the system with the midsagittal plane of the test dummy head—

(1) Coincident with the center SORL of the standard seating assembly, in the case of the add-on child restraint system, or

(2) Vertical and parallel to the longitudinal center line of the specific vehicle, in the case of a built-in child restraint system.

(b) Extend the arms of the test dummy as far as possible in the upward vertical direction. Extend the legs of the dummy as far as possible in the forward horizontal direction, with the dummy feet perpendicular to the center line of the lower legs.

(c) Using a flat square surface with an area of 2580 square millimeters, apply a force of 178 N, perpendicular to:

(1) The plane of the back of the standard seat assembly, in the case of an add-on system, or

(2) The back of the vehicle seat in the specific vehicle shell or the specific vehicle, in the case of a built-in system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint system belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint system belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2.

(d) After the steps specified in paragraph (c) of this section, rotate each dummy limb downwards in the plane parallel to the dummy's midsagittal plane until the limb contacts a surface of the child restraint system or the standard seat assembly, in the case of an add-on system, or the specific vehicle shell or specific vehicle, in the case of a built-in system, as appropriate. Position the limbs, if necessary, so that limb placement does not inhibit torso or head movement in tests conducted under S6.

(e) Additional provisions when using the Hybrid III 3-year-old (part 572, subpart P) dummy in a rear-facing child restraint system.

(1) When using the Hybrid III 3-year-old dummy in a rear-facing child restraint system with an internal harness or other components to restrain the child, remove the knee stop screw (as shown in drawing 210–6516 of Drawing No. 210–5000–1 (L),–2(R), Leg Assembly in subpart P of part 572 of this chapter (incorporated by reference, see § 571.5) from the right and left knee so as to let the knees hyperextend.

(2) Place the subpart P dummy in the child restraint system being tested so that the back of the dummy torso contacts the back support surface of the system. For a child restraint system equipped with a fixed or movable surface described in S5.2.2.2 that is being tested under the conditions of test configuration II, do not attach any of the child restraint system belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface that is being tested under the conditions of test configuration I, attach all appropriate child restraint system belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2.

S10.2.3 *Hybrid III 6-year-old in belt-positioning seats, Hybrid III weighted 6-year-old in belt-positioning seats, and Hybrid III 10-year-old in belt-positioning seats.* When using the Hybrid III 6-year-old (part 572, subpart N), the Hybrid III weighted 6-year-old (part 572, subpart S), or the Hybrid III 10-year-old (part 572, subpart T) in belt-positioning seats, position the dummy in accordance with S5.6.1 or S5.6.2, while conforming to the following:

(a) *Prepare the dummy.* (1) When using the Hybrid III 10-year-old dummy, prepare the dummy according to the following:

(i) Set the dummy's neck angle at the SP–16 setting (''SP'' means standard procedure), see Figure 14a.

(ii) Set the dummy's lumbar angle at the SP–12 setting, see Figure 14b. This is done by aligning the notch on the lumbar adjustment bracket with the SP–12 notch on the lumbar attachment.

(iii) Adjust the limb joints to 1–2 g while the torso is in the seated position.

(iv) Apply double-sided tape to the surface of a lap shield, which is a piece of translucent silicone rubber 3 mm ±0.5 mm thick (50A durometer) cut to the dimensions specified in Figure 13 in this section. Place the lap shield on the pelvis of the dummy. Align the top of the lap shield with the superior anterior edge of the pelvis skin. Attach the lap shield to the dummy.

(v) Apply double-sided tape to one side of a pelvis positioning pad, which is a 125 x 95 x 20 mm (±2 mm tolerance in each of the three dimensions) piece of closed cell (Type 2 according to ASTM D1056–07) (incorporated by reference; see § 571.5) foam or rubber cut from material having the following specifications: compression resistance between 9 to 17 psi in a compression-deflection test specified in ASTM D1056–07 (incorporated by reference; see § 571.5), and a density of 7 to 12.5 lb/ft$^3$. Center the long axis of the pad on the posterior of the pelvis with the top edge of the foam aligned with the superior edge of the pelvis skin. Attach the pelvis positioning pad to the dummy.

(vi) Dress and prepare the dummy according to S9.

(2) When using the Hybrid III 6-year-old dummy and the Hybrid III weighted 6-year-old dummy, prepare the dummy according to the following:

(i) If necessary, adjust the limb joints to 1–2 g while the torso is in the seated position.

(ii) Apply double-sided tape to the surface of a lap shield, which is a piece of translucent silicone rubber 3 mm thick ±0.5 mm thick (50A durometer) cut to the dimensions specified in Figure 13. Place the lap shield on the pelvis of the dummy. Align the top of the lap shield with the superior anterior edge of the pelvis skin. Attach the lap shield to the dummy.

(iii) Dress and prepare the dummy according to S9.

(b) *Position the belt-positioning seat.* Position the belt-positioning seat according to S6.1.2(a)(1)(ii).

(c) *Position the dummy.* Position the dummy in the belt-positioning seat.

(1) Place the dummy on the seat cushion of the belt-positioning seat such that the plane of the posterior pelvis is parallel to the plane of the seat back of the belt-positioning seat, standard seat assembly or vehicle seat back, but not touching. Pick up and move the dummy rearward, maintaining the parallel planes, until the pelvis positioning pad, if used, or the pelvis or back of the dummy and the back of the belt-positioning seat or the back of the standard seat assembly, are in minimal contact.

(2) Straighten and align the arm segments horizontally, then rotate the

arms upward at the shoulder as far as possible without contacting the belt-positioning seat. Straighten and align the legs horizontally and extend the lower legs as far as possible in the forward horizontal direction, with the feet perpendicular to the centerline of the lower legs.

(3) Using a flat square surface with an area of 2580 square millimeters, apply a force of 178 N (40 lb) first against the dummy crotch and then against the dummy thorax on the midsagittal plane of the dummy, perpendicular to:

(i) The plane of the back of the belt-positioning seat, in the case of a belt-positioning seat with a back, or,

(ii) The plane of the back of the standard seat assembly or vehicle seat, in the case of a backless belt-positioning seat or built-in booster.

(4) Rotate the arms of the dummy down so that they are perpendicular to the torso.

(5) Bend the knees until the back of the lower legs are in minimal contact with the belt-positioning seat, standard seat assembly or vehicle seat. Position the legs such that the outer edges of the knees are 180 ±10 mm apart for the Hybrid III 6-year-old dummy and 220 ±10 mm apart for the Hybrid III 10-year-old dummy. Position the feet such that the soles are perpendicular to the centerline of the lower legs. In the case of a belt-positioning seat with a back, adjust the dummy so that the shoulders are parallel to a line connecting the shoulder belt guides. This can be accomplished by leaning the torso such that the dummy's head and neck are centered on the backrest components of the belt-positioning seat. In case of a backless child restraint system, adjust the dummy's torso so that the head is as close to laterally level as possible.

(d) *Apply the belt.* Attach the vehicle belts and tighten them as specified in S6.1.2.

(e) *Dummy final positioning.* (1) Check the leg, feet, thorax and head positions and make any necessary adjustments to achieve the positions described in S10.2.3(c)(5). Position the legs, if necessary, so that the leg placement does not inhibit thorax movement in tests conducted under S6.

(2) Rotate each dummy arm downwards in the plane parallel to the dummy's midsagittal plane until the arm contacts a surface of the child restraint system or the standard seat assembly, in the case of an add-on system, or the specific vehicle shell or specific vehicle, in the case of a built-in system, as appropriate. Position the arms, if necessary, so that the arm placement does not inhibit torso or head movement in tests conducted under S6.

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**Figure 1A–1 to § 571.213b—Seat Orientation Reference Line and Seat Belt Anchorage Point Locations on the Standard Seat Assembly**

(See drawing package referenced in this section for tolerances)

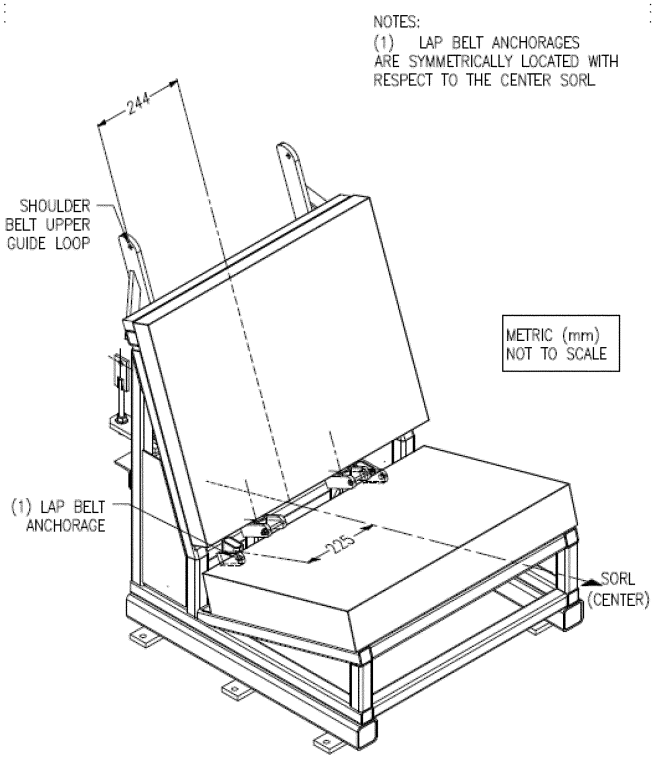


**Figure 1A–2 to § 571.213b—Seat Orientation Reference Line and Location of the Lower Anchorages of the Child Restraint Anchorate System on the Standard Seat Assembly**

(See drawing package referenced in this standard for tolerances)

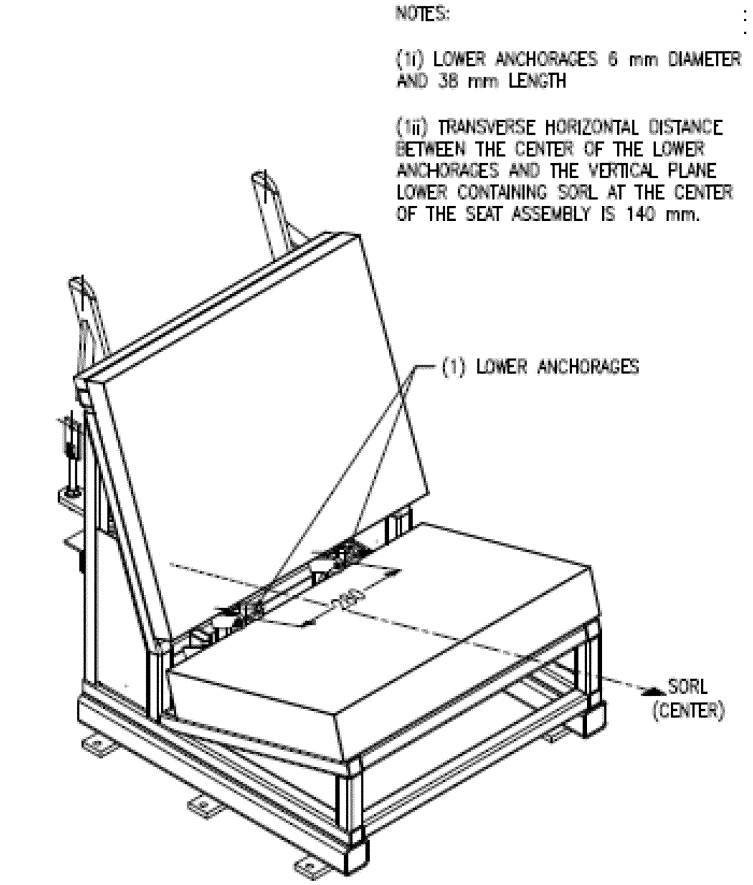
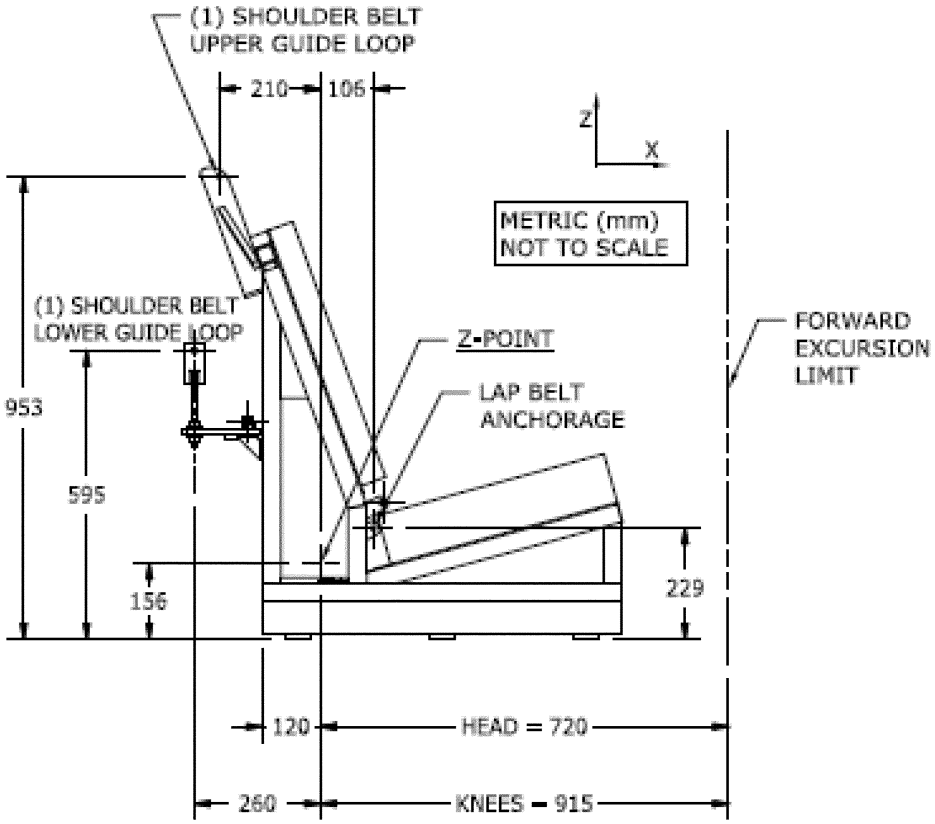


**Figure 1B–1 to § 571.213b—Location of Shoulder Belt Upper and Lower Guide Loops and Forward Excursion Limits on the Standard Seat Assembly**

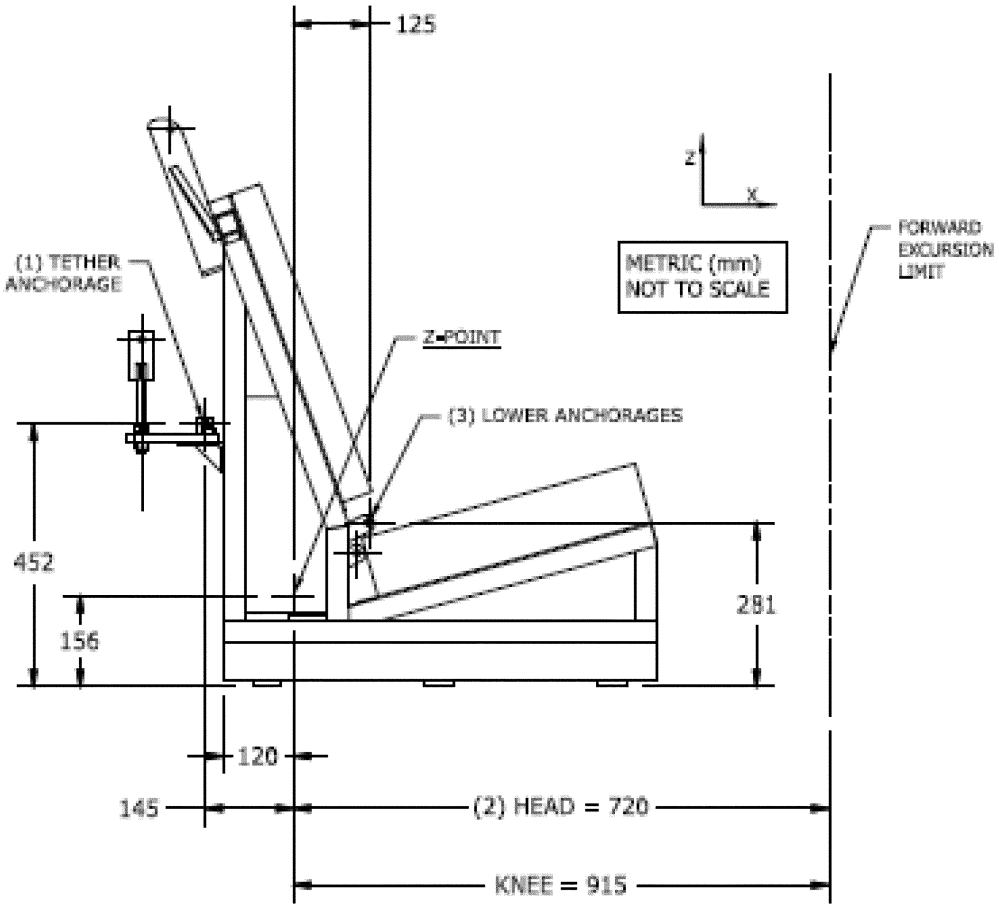
(See drawing package referenced in this standard for tolerances)




NOTES:
(1) SHOULDER BELT UPPER AND LOWER GUIDE LOOPS ARE LOCATED 244 mm RIGHT AND LEFT OF THE CENTER SORL AS SHOWN IN FIGURE 1A

**Figure 1B–2 to § 571.213b—Location of the Child Restraint Anchorages and Forward Excursion Limits on the Standard Seat Assembly**

(See drawing package referenced in this standard for tolerances)




NOTES:
(1) TETHER ANCHORAGE LOCATED ON CENTER SORL
(2) HEAD EXCURSION LIMIT IS (▯) 720 mm WITH TETHER ATTACHED AND (▮) 813 mm WITH TETHER UNATTACHED
(3) LOWER ANCHORAGES LOCATED 125 mm FORWARD OF Z POINT AND 281 mm UPWARD FROM FLOOR

**Figure 1C to § 571.213b—Rear-Facing Child Restraint Forward and Upper Head Excursion Limits**

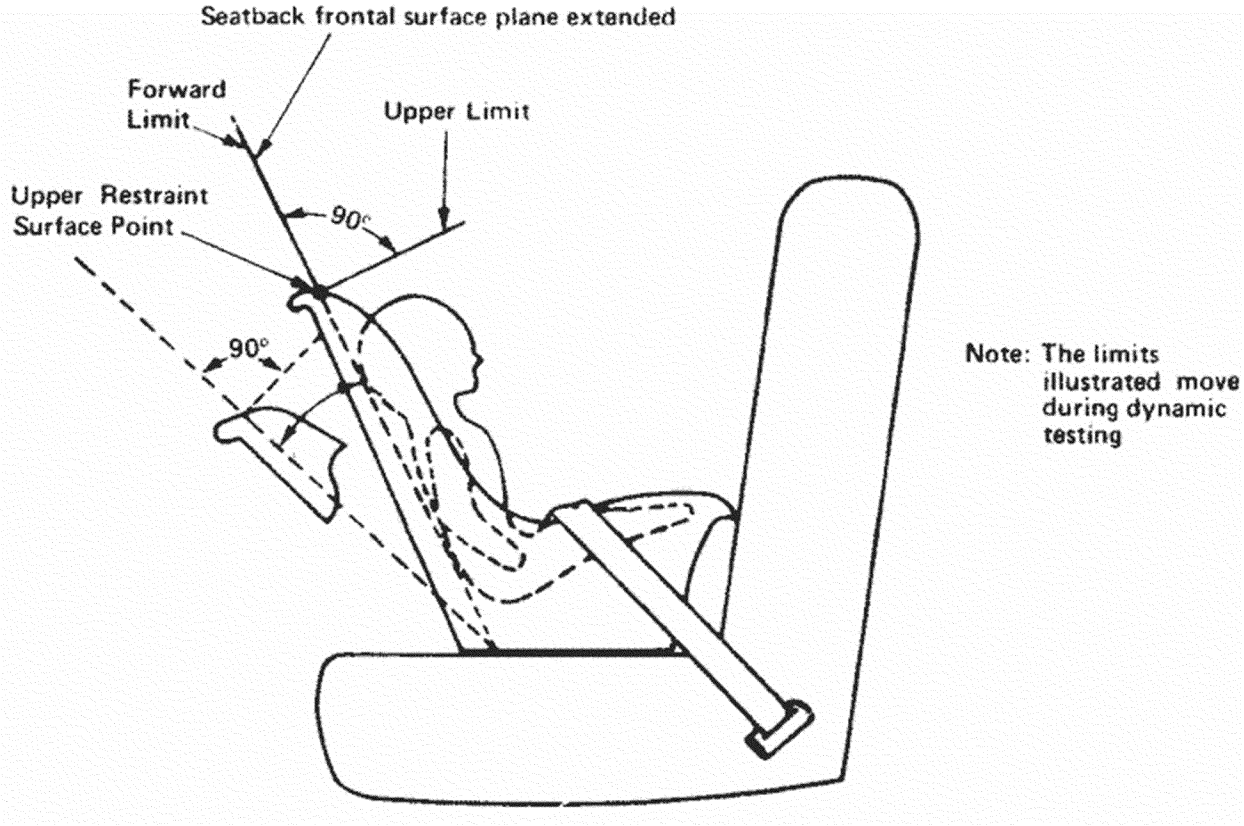
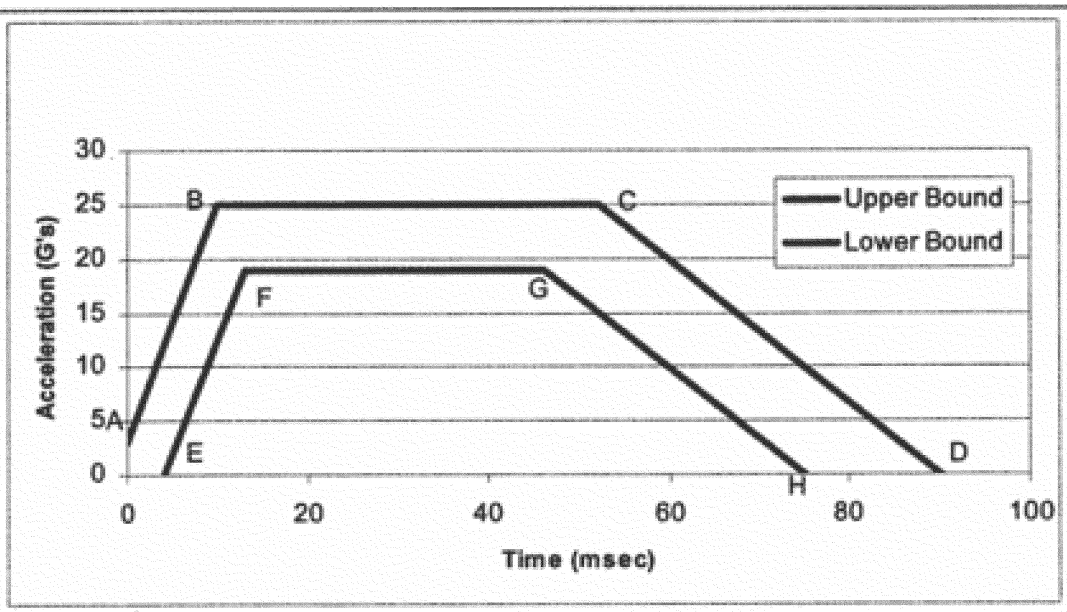


**Figure 2 to § 571.213b**




| Upper Bound | | | Lower Bound | | |
|---|---|---|---|---|---|
| **Point** | **Time** | **Acceleration** | **Point** | **Time** | **Acceleration** |
| **A** | 0 | 3 | **E** | 4 | 0 |
| **B** | 10 | 25 | **F** | 13 | 19 |
| **C** | 52 | 25 | **G** | 46 | 19 |
| **D** | 90 | 0 | **H** | 75 | 0 |

**Figure 3 to § 571.213b**

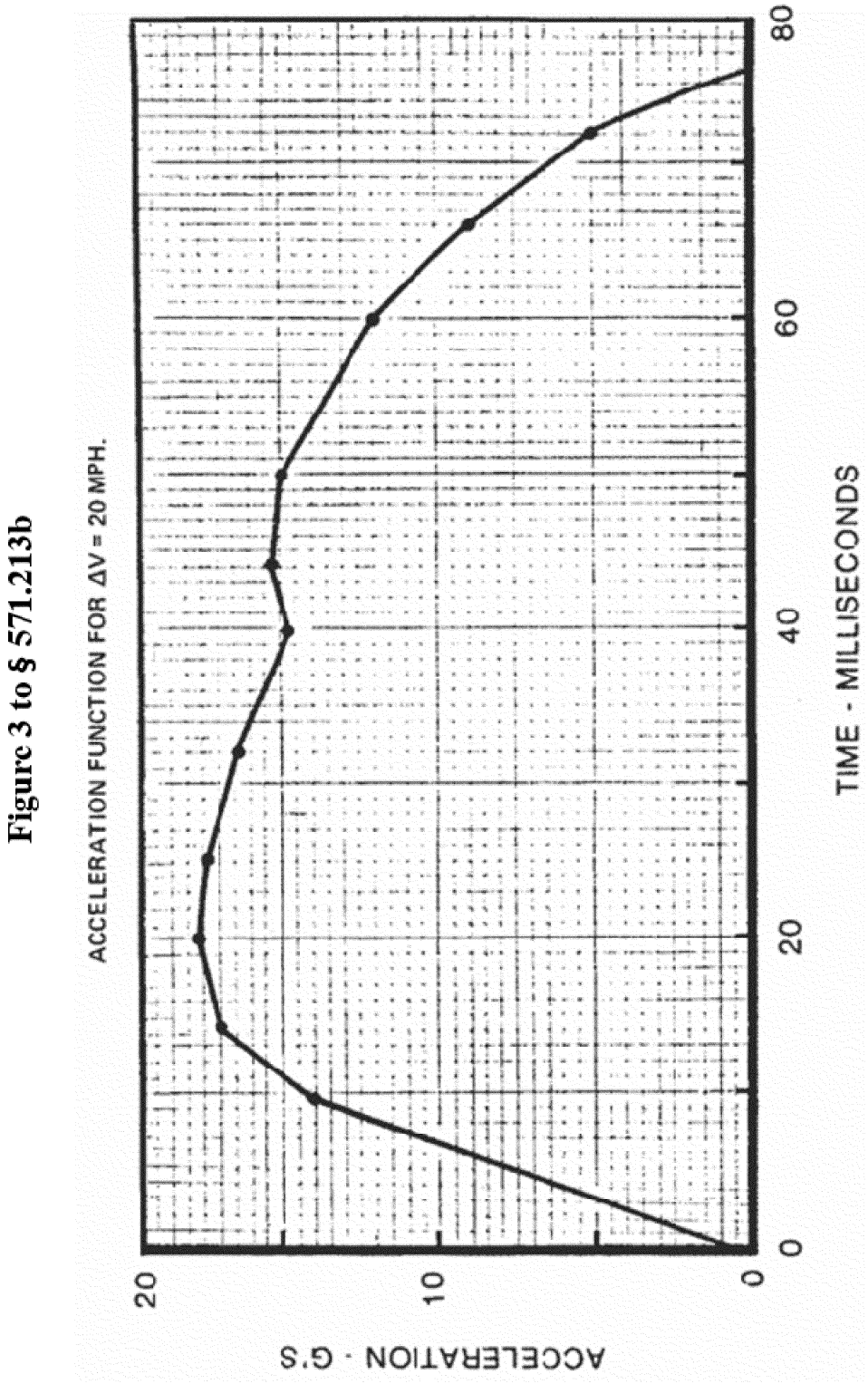



**Figure 3 to § 571.213b**

**Figure 4 to § 571.213b—Buckle Release Test**

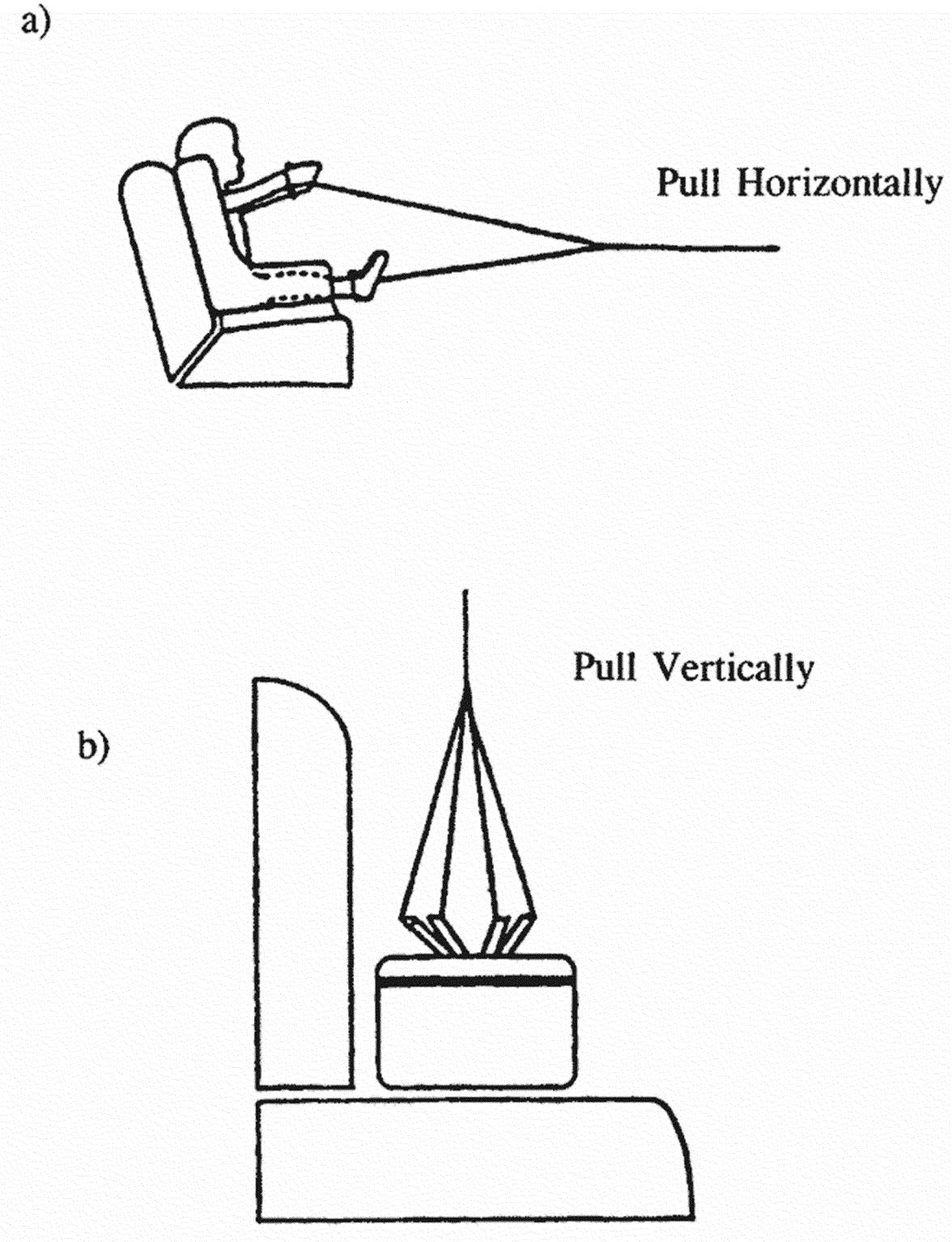
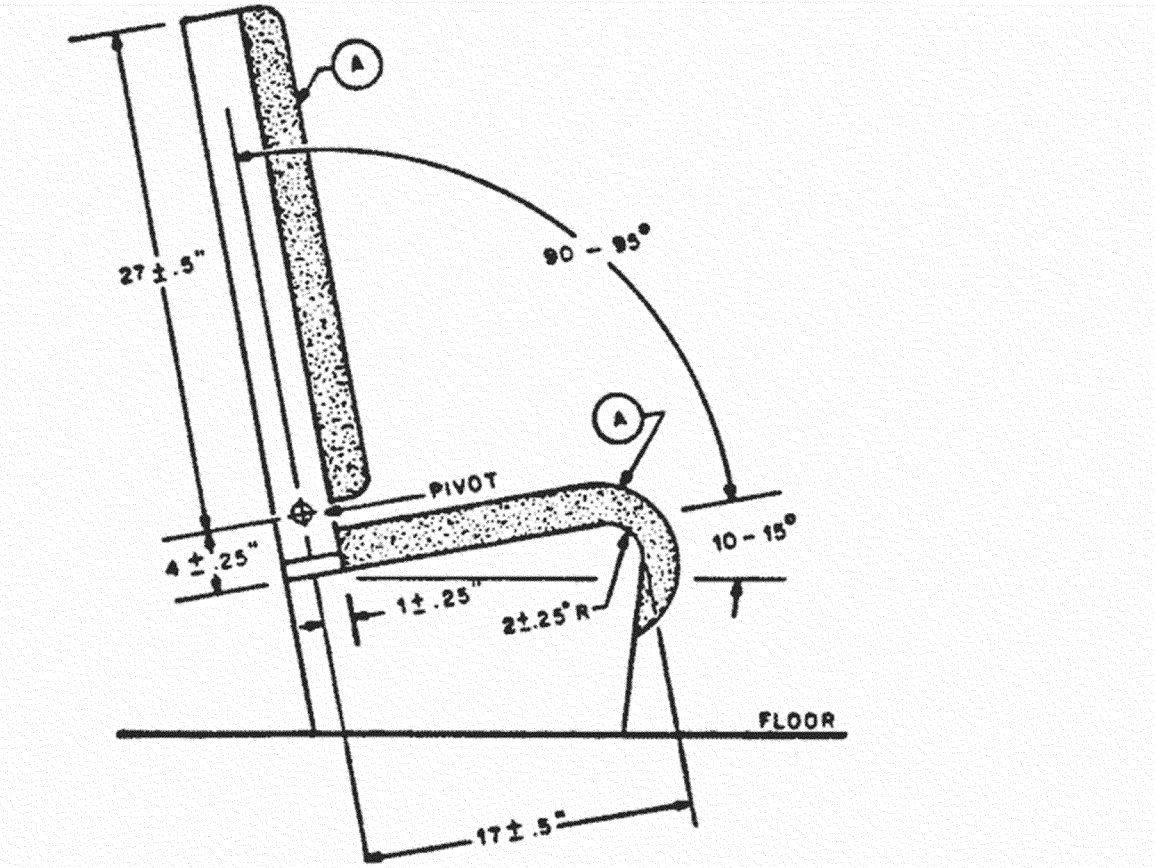


**Figure 5[Reserved]**

**Figure 6 to § 571.213b -Simulated Aircraft Passenger Seat**




"A" represents a 2- to 3-inch thick polyurethane foam pad, 1.5-2.0 pounds per cubic foot density, over 0.020-inch-thick aluminum pan, and covered by 12- to 14-ounce marine canvas. The sheet aluminum pan is 20 inches wide and supported on each side by a rigid structure. The seat back is a rectangular frame covered with the aluminum sheet and weighing between 14 and 15 pounds, with a center of mass 13 to 16 inches above the seat pivot axis. The mass moment of inertia of the seat back about the seat pivot axis is between 195 and 220 ounce-inch-second$^2$. The seat back is free to fold forward about the pivot, but a stop prevents rearward motion. The passenger safety belt anchor points are spaced 21 to 22 inches apart and are located in line with the seat pivot axis.

**Figure 7 to § 571.213b—Pre-Impact Buckle Release Force Test Set-up**

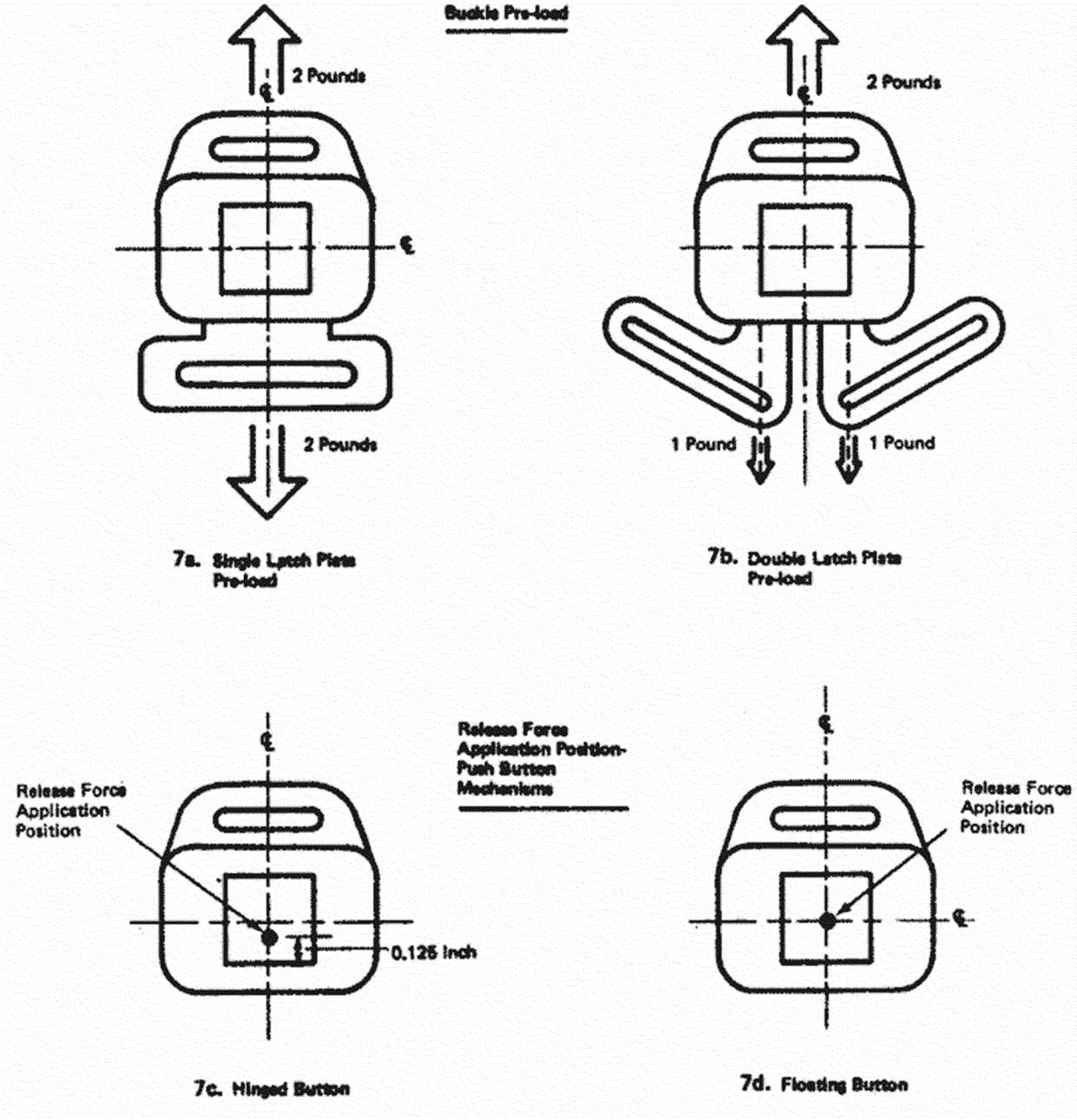


**Figure 8 to § 571.213b—Release Force Application Device-Push Button Release Buckles**

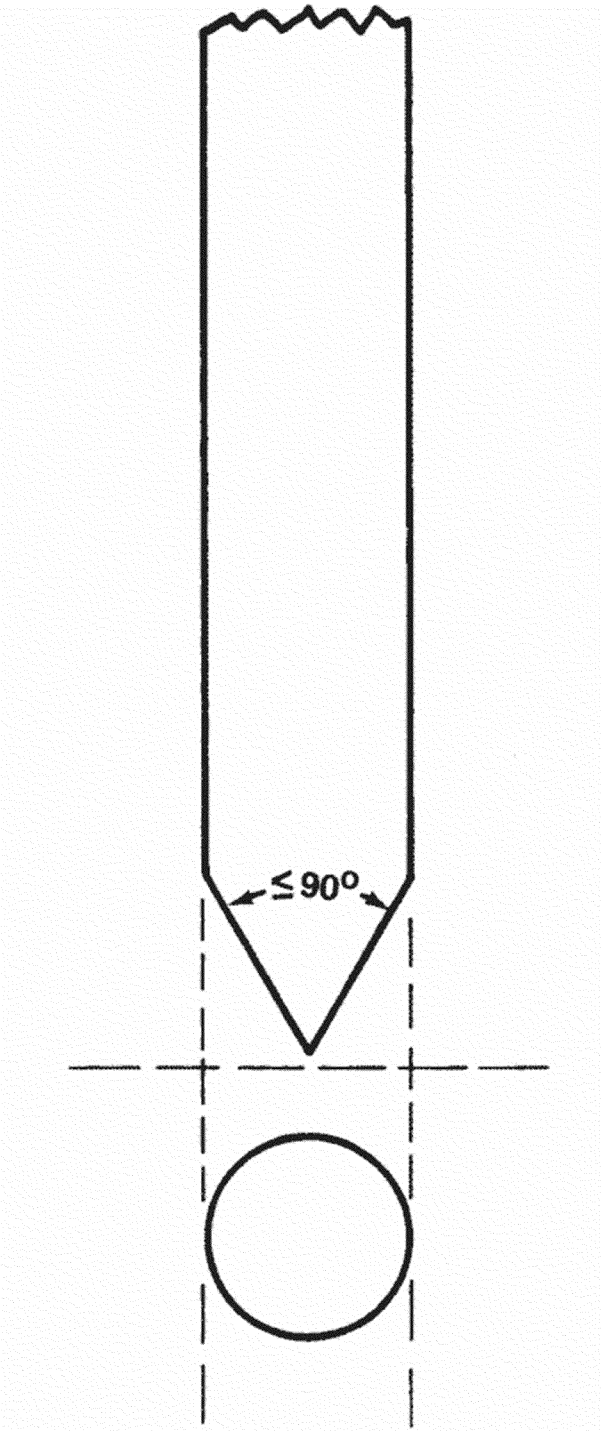


**Figure 9a to § 571.213b—Registration Form for Child Restraint Systems—Product Identification Number and Purchaser Information Side**

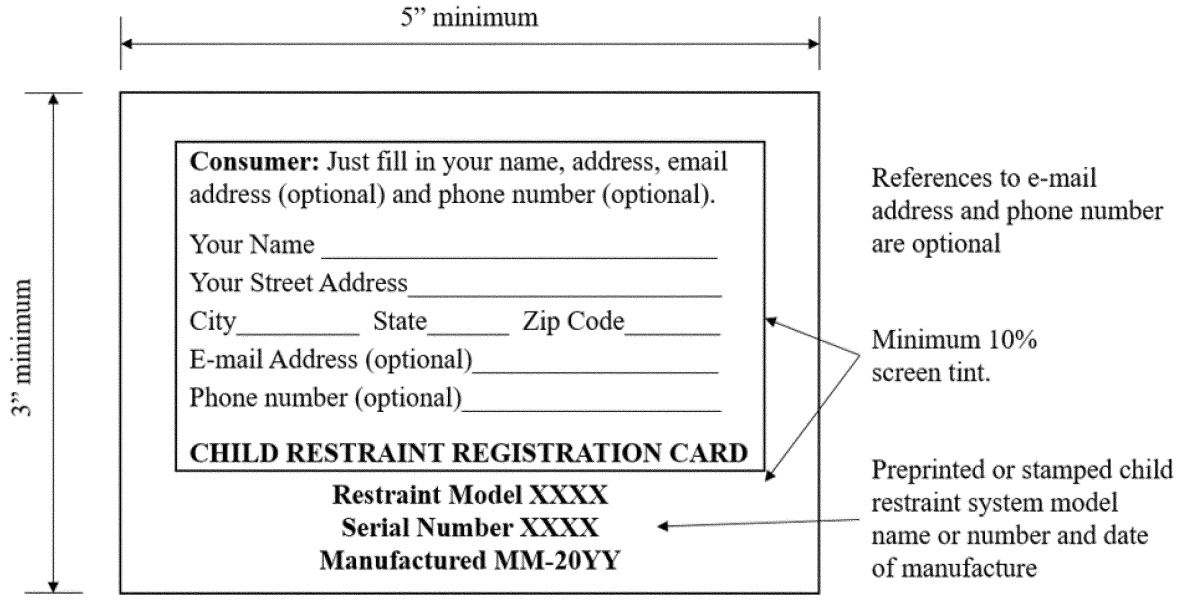



**Figure 9b to § 571.213b—Registration Form for Child Restraint Systems—Address Side**

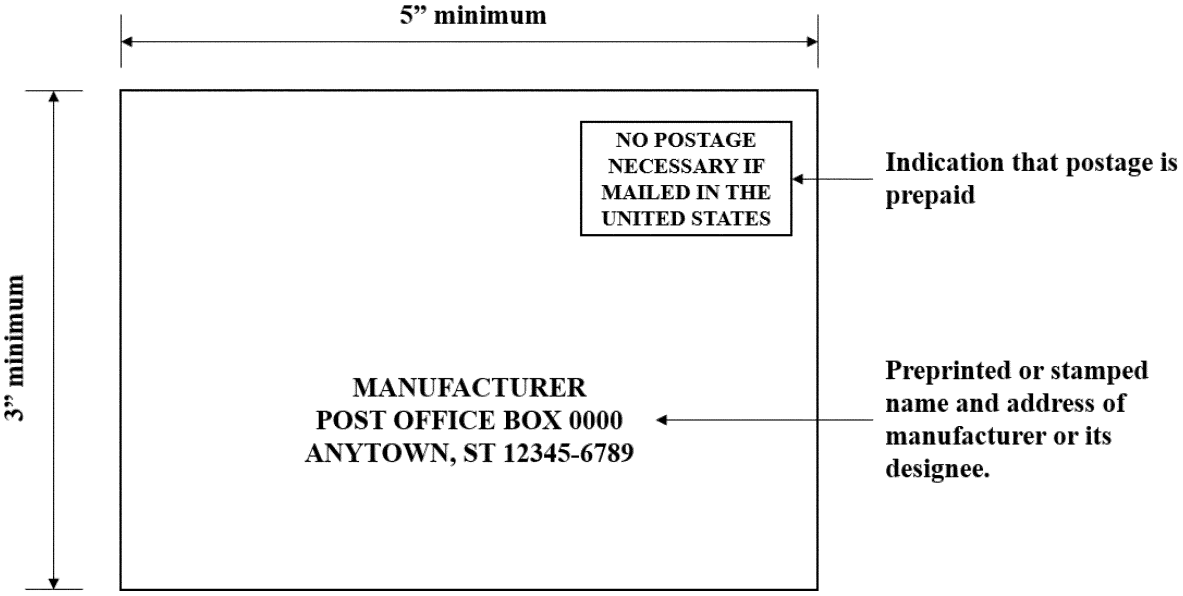
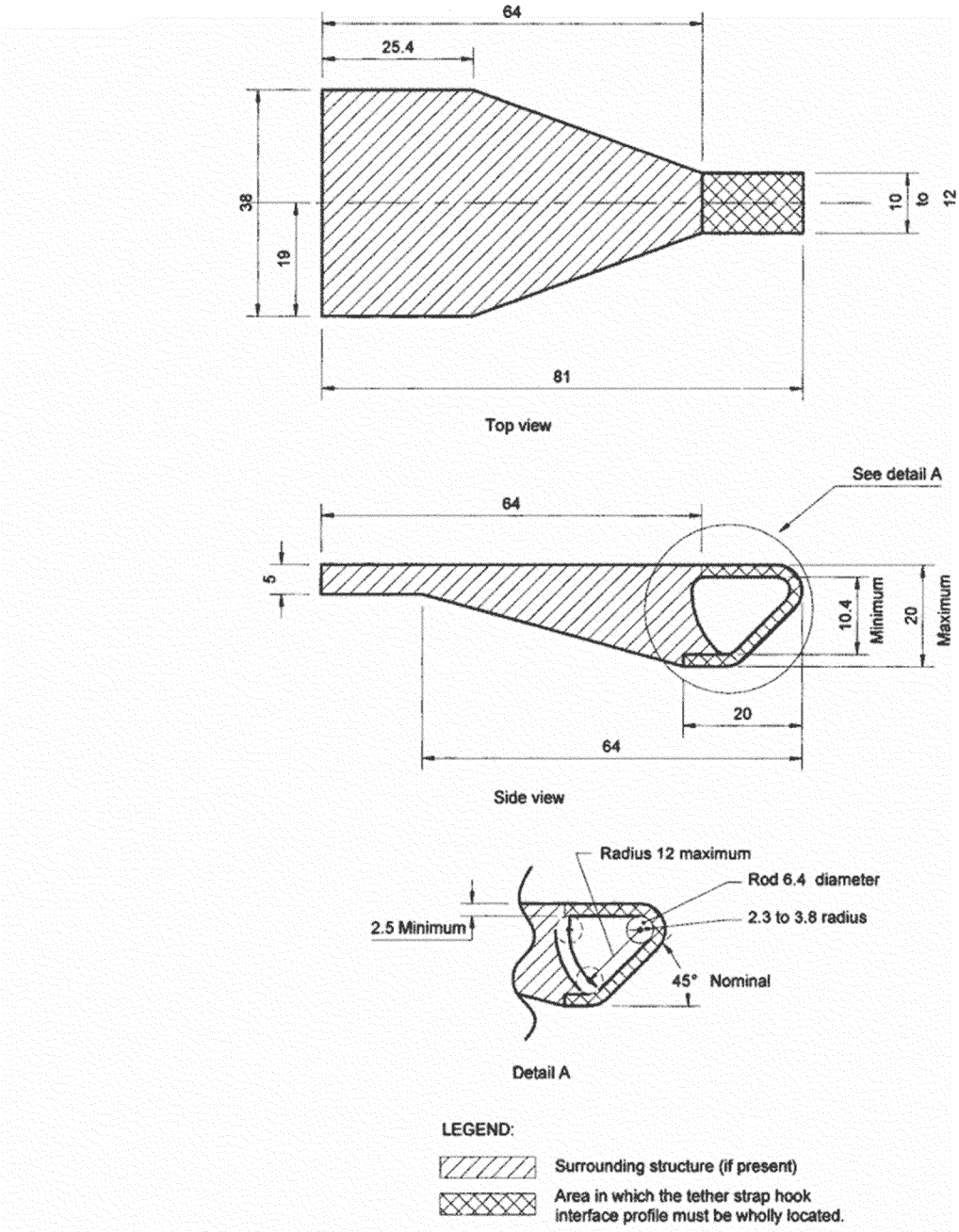


**Figure 10 to § 571.213b—Label on Child Seat Where Child's Head Rests**

**Figure 11 to § 571.213b—Interface Profile of Tether Hook**




Notes

1. Dimensions in mm, except where otherwise indicated
2. Drawing not to scale

**Figure 12 to § 571.213b—Label on Harness Component That Attaches to School Bus Seat Back**

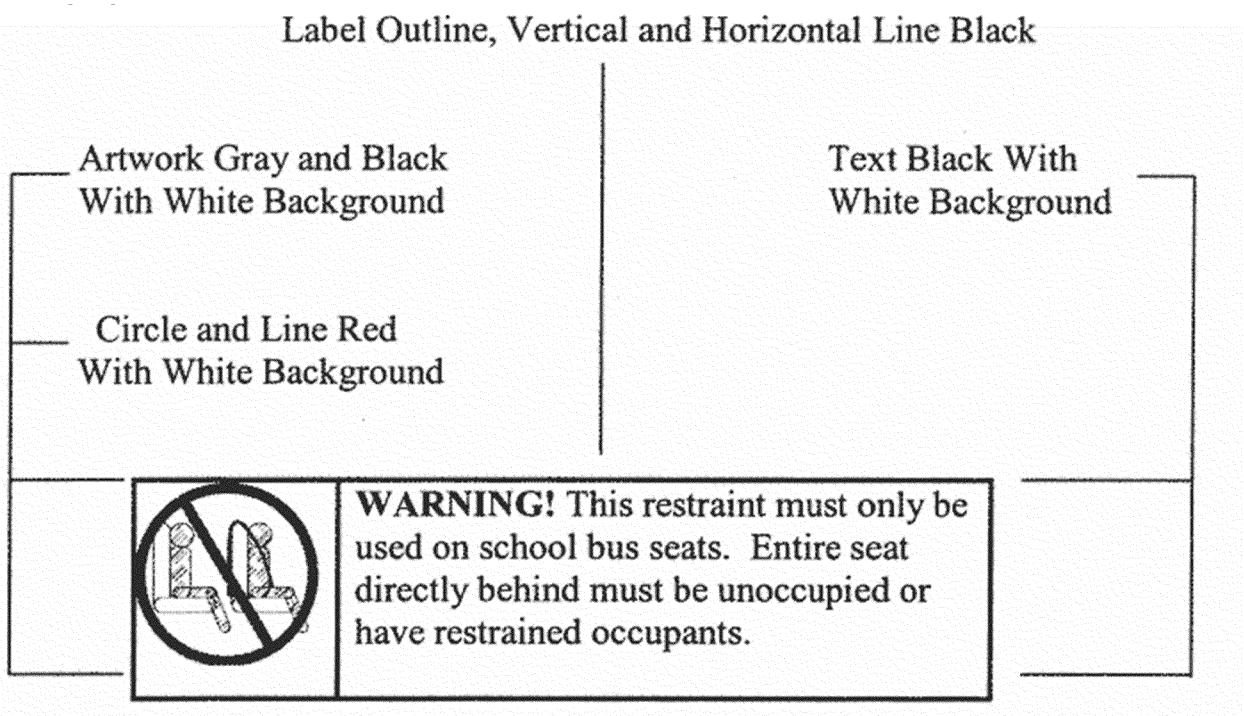


**Figure 13 to § 571.213b—Lap Shield**

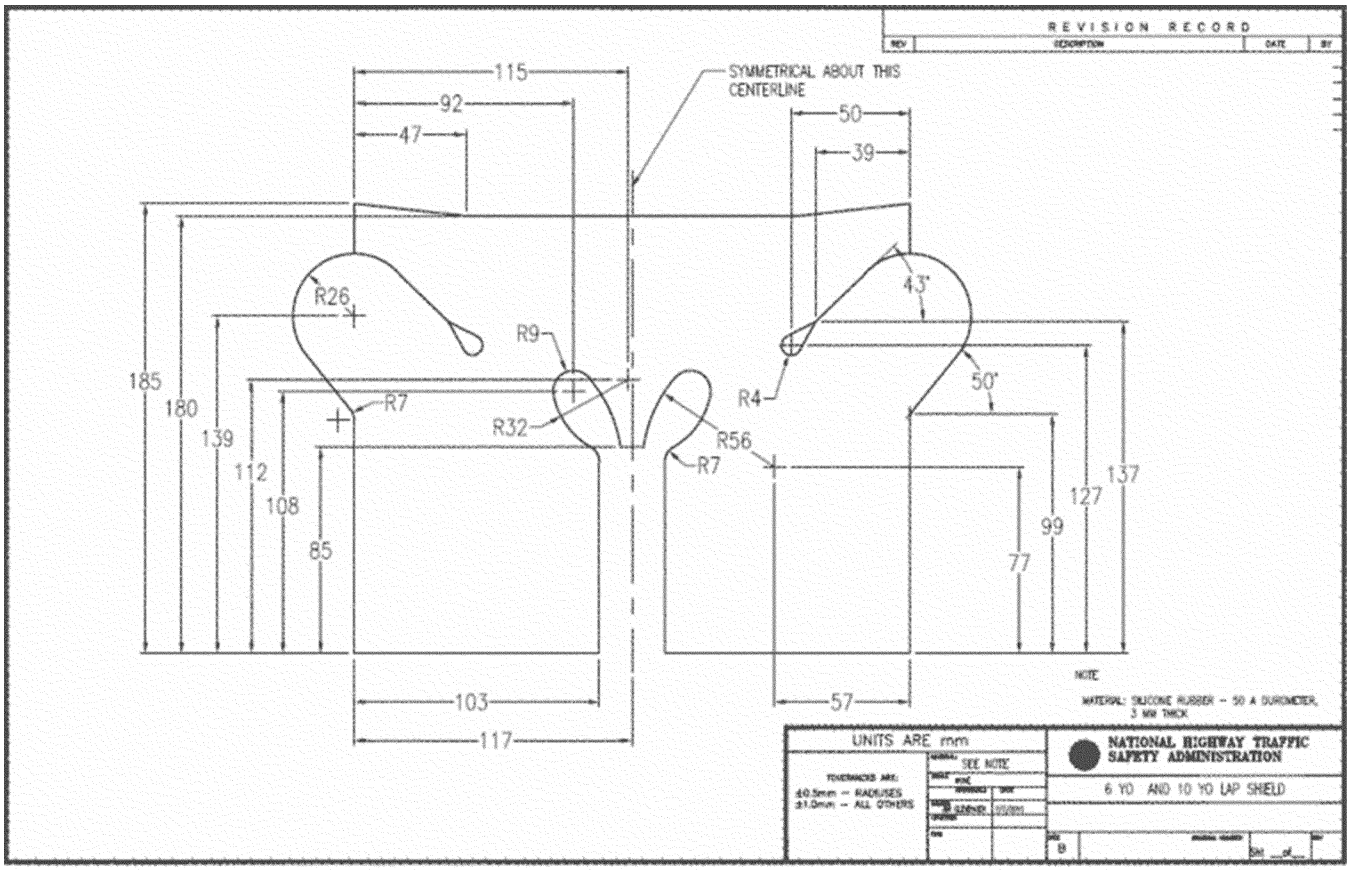



**Figure 14a to § 571.213b—HIII–10C Dummy Neck Angle Setting is SP–16 Degrees**

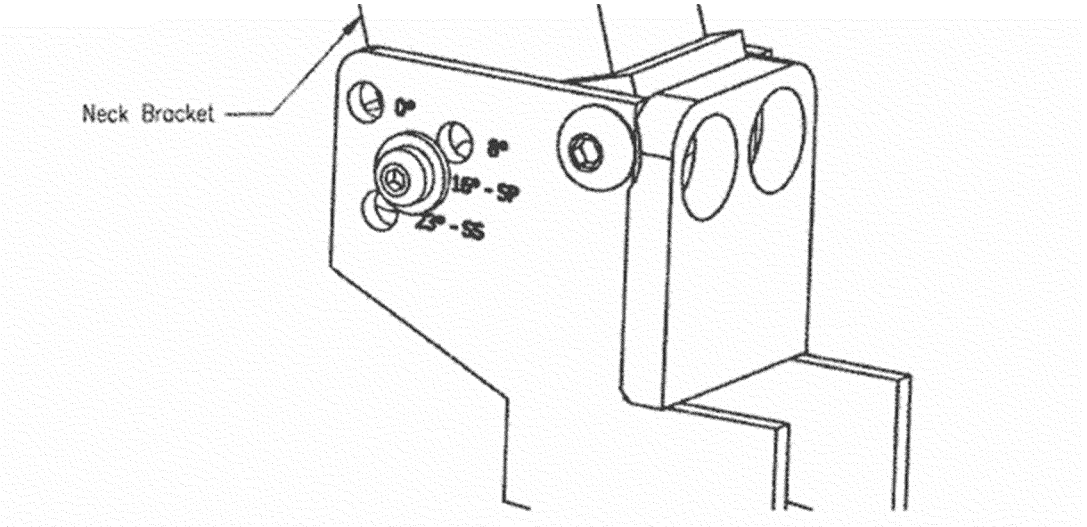
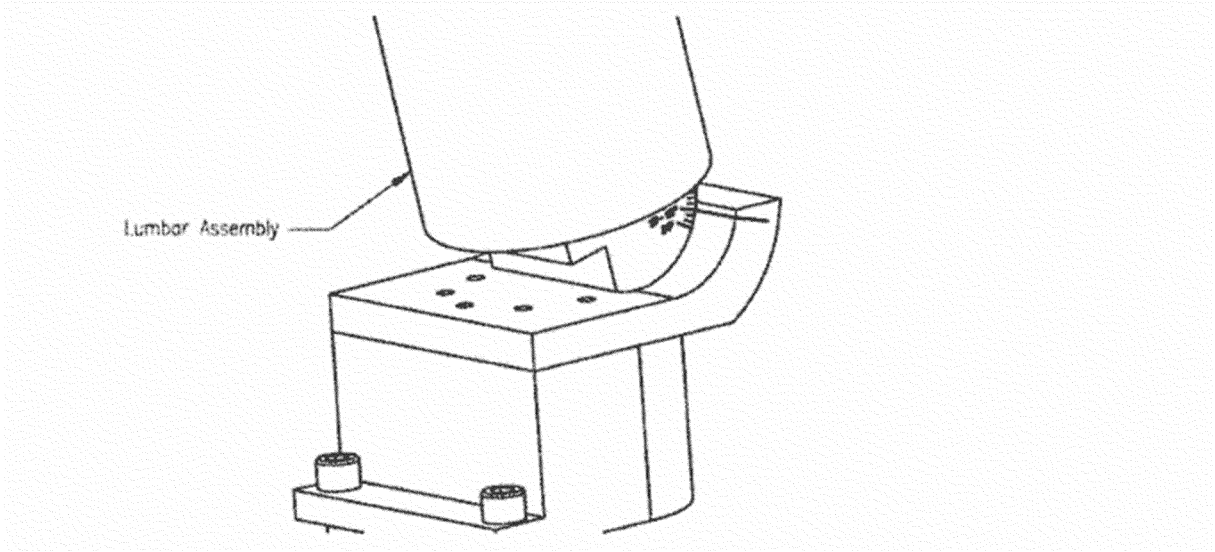


**Figure 14b to § 571.213b—HIII–10C Dummy Lumbar Angle Setting is SP–12 Degrees**




Issued under authority delegated in 49 CFR 1.95 and 501.8.

**Ann E. Carlson,**

*Acting Administrator.*

[FR Doc. 2023–26082 Filed 12–4–23; 8:45 am]

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Part V

## Environmental Protection Agency

40 Part 52

Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R10–OAR–2022–0115; FRL–9755–02–R10]**

# Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-Hour $PM_{2.5}$ Serious Area and 189(d) Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving in part and disapproving in part the State implementation plan (SIP) submissions, submitted by the State of Alaska (Alaska or the State) to address Clean Air Act (CAA or Act) requirements for the 2006 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) in the Fairbanks North Star Borough $PM_{2.5}$ nonattainment area (Fairbanks $PM_{2.5}$ Nonattainment Area). Alaska made these submissions on December 13, 2019, and December 15, 2020.

**DATES:** This final rule is effective on January 4, 2024.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2022–0115. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Matthew Jentgen, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA, 98101, (206) 553–0340, *jentgen.matthew@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to EPA.

## Table of Contents



## I. Background

For a complete regulatory history of the Fairbanks $PM_{2.5}$ Nonattainment Area, see the EPA's proposal, published on January 10, 2023 (88 FR 1454) (Proposal). This action finalizes the EPA's specific assessment of the State of Alaska's SIP submissions to meet nonattainment plan requirements for the Fairbanks $PM_{2.5}$ Nonattainment Area, as discussed in the Proposal.

In summary, Alaska submitted a plan to address the Serious area plan requirements on December 13, 2019 (Fairbanks Serious Plan). On September 2, 2020, the EPA determined that the area failed to attain the NAAQS by the outermost statutory Serious area attainment date of December 31, 2019, and denied the State's Serious area attainment date extension request under CAA section 188(e) (85 FR 54509). As a result, Alaska was required to submit a new SIP submission to meet both the Serious area attainment plan requirements and the additional CAA requirements set forth in CAA section 189(d) by December 31, 2020.[1]

Prior to the EPA taking action to approve or disapprove the Fairbanks Serious Plan, Alaska withdrew and replaced several chapters of the Fairbanks Serious Plan with the Fairbanks 189(d) Plan submission, submitted on December 15, 2020 (Fairbanks 189(d) Plan).[2] Thus, the State intended to address the Serious area plan requirements with a combination of unwithdrawn portions of the Fairbanks Serious Plan and revised elements submitted as part of the Fairbanks 189(d) Plan. In this final action, the EPA is not acting on the withdrawn elements of the prior Fairbanks Serious Plan, but only acting on those elements that remain as revised by Alaska in the Fairbanks 189(d) Plan. Additionally, on September 25, 2023, Alaska withdrew the State's sulfur dioxide ($SO_2$) best available control technology (BACT) findings submitted as part of the Fairbanks Serious Plan.[3]

In the Proposal, the EPA proposed to approve the following components of the Fairbanks Serious Plan and Fairbanks 189(d) Plan: the base year emissions inventory; the State's $PM_{2.5}$ precursor demonstrations for nitrogen oxide ($NO_X$) and volatile organic compound (VOC) emissions; the control strategy for the solid fuel-fired heating device source category and ammonia ($NH_3$) BACM and BACT findings, as applicable; specific regulations under 18 AAC 50.075 through 077 and the Fairbanks Emergency Episode Plan[4]

[1] 40 CFR 51.1003(c).

[2] See SIP submission cover letter, submitted by Alaska Department of Environmental Conservation (ADEC) Commissioner Jason Brune to EPA Regional Administrator, Chris Hladick, on December 15, 2020.

[3] ''Fairbanks SIP submissions for the Serious area and 189(d) plans'' Letter from Emma Pokon, Acting Commissioner, Alaska Department of Environmental Conservation, to Casey Sixkiller, Regional Administrator, EPA Region 10, September 25, 2023. Included in the docket for this action.

[4] State Air Quality Control Plan, Vol. II, Chapter III.D.7.12. This portion of Alaska's SIP is distinct from Alaska's emergency powers under Alaska Statutes 46.03.820 and 18 AAC 50.245–50.246 that authorize ADEC to declare an air alert, air warning, or air advisory to notify the public and prescribe and publicize curtailment action. In prior actions, the EPA has determined that these authorities are consistent with CAA section 110(a)(2)(G) and 40 CFR 51.150 through 51.153. See 83 FR 60769, November 27, 2018, at p. 60772.

(except for the contingency measure provision).

The EPA proposed disapproval of the following elements of the Fairbanks Serious Plan and the Fairbanks 189(d) Plan as not meeting applicable requirements for Serious area plan requirements and CAA section 189(d) plan requirements: attainment projected emissions inventory; best available control measure (BACM) requirements for residential and commercial fuel combustion, wood sellers; coal-fired heating devices, coffee roasters, charbroilers, used oil burners, weatherization and energy efficiency measures, and mobile source emissions. The EPA proposed disapproval of most of the control strategy BACT requirements for certain large stationary sources in the Fairbanks $PM_{2.5}$ Nonattainment Area. Additionally, the EPA proposed disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan for not meeting the remaining nonattainment planning elements: the CAA section 189(d) requirement to analyze additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as reasonably available control measure/technology (RACM/RACT), BACM/BACT, and Most Stringent Measures (MSM));[5] attainment demonstration and modeling; reasonable further progress; motor vehicle emission budgets; quantitative milestones; and contingency measures.

Section II of this preamble summarizes comments received during the public comment period for the Proposal and provides the EPA's responses. With respect to most planning requirements, the EPA is finalizing approval and disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan as proposed. However, based on the comments received, the EPA is finalizing approval of certain portions of the Fairbanks Serious Plan and Fairbanks 189(d) Plan that it originally proposed to disapprove. Specifically, the EPA is finalizing approval of Alaska's economic infeasibility demonstrations for a number of area sources identified in Alaska's 2019 base year emission inventory. Alaska's economic infeasibility demonstration provided updated cost information and additional considerations for a number of control measures. Based on these comments, we are finalizing approval for residential and commercial fuel oil combustion, charbroilers, used oil burners, and most of the measures for mobile sources. This means the EPA is approving Alaska's evaluation that ULSD adoption for residential and commercial fuel oil combustion is not economically feasible at this time and that Alaska will not have to adopt additional controls for these emission sources to satisfy the control strategy requirements for Serious areas and Serious areas that fail to attain.[6]

The EPA will work with the State of Alaska to address those portions of the Fairbanks Serious Plan and Fairbanks 189(d) Plan that the EPA is disapproving in this action. Alaska may rectify each of these disapprovals with a revised SIP submission. The EPA understands that the State is developing a revised SIP submission to address the plan deficiencies that are identified in section III of this preamble. Specifically, with this new SIP submission, the EPA anticipates Alaska will identify, adopt, and implement all feasible control measures and ensure that such control measures are adopted and submitted in a manner that is enforceable as a practical matter and permanent.

The EPA also understands that the State is nearing completion of an updated air quality model that may better characterize particulate emissions in the Fairbanks $PM_{2.5}$ Nonattainment Area. Given this development, Alaska may potentially address the EPA's disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan for failure to adopt and implement $SO_2$ BACT requirements for major stationary sources though either identifying, adopting, and implementing BACT for the control of $SO_2$ emissions from these sources or a major stationary source $SO_2$ precursor demonstration that meets statutory and regulatory requirements and clearly demonstrates these sources do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the Fairbanks $PM_{2.5}$ Nonattainment Area.

The State may also update its modeled attainment demonstration, reasonable further progress provisions, quantitative milestones, and attainment projected inventories. Finally, the State will need to evaluate and adopt adequate contingency measures.

[5] MSM is applicable if the EPA has previously granted an extension of the attainment date under CAA section 188(e) for the nonattainment area and NAAQS at issue. As mentioned above, the EPA denied Alaska's request to extend the Serious area attainment date for the Fairbanks Serious Nonattainment Area.

[6] We note that while we are approving most of Alaska's analysis for mobile sources, Alaska will need to further evaluate, and adopt and implement as necessary, light-duty vehicle anti-idling measures to meet CAA requirements.

## II. Public Comments and EPA Responses

The EPA provided a 72-day period for the public to comment on the proposed action that ended on March 23, 2023. We received 164 public comments.[7] The public comments are included in the docket for this action. On March 7, 2023, the EPA held a public hearing in Fairbanks, Alaska, at the Wood Center, University of Alaska Fairbanks. Comments received at the public hearing have been treated the same as written comments submitted to the docket and are summarized in this section II of the preamble. The transcript for the March 7, 2023, public hearing is also included in the docket for this action. Additionally, on April 17, 2023, EPA Region 10 Regional Administrator Sixkiller engaged in consultation with Doyon, Limited as an Alaska Native Corporation under the Alaska Native Claims Settlement Act (ANCSA) on the Proposal.[8] Separately, Doyon, Limited provided comments during the public hearing.

### *A. Timing of the EPA's Rulemaking*

The State of Alaska submitted the Fairbanks Serious Plan on December 13, 2019. On January 10, 2020, the EPA made a finding that this submission was administratively complete.[9] Alaska subsequently submitted the Fairbanks 189(d) Plan on December 15, 2020. That submission was deemed complete by operation of law on June 15, 2021. Therefore, in accordance with CAA section 110(k)(2), the EPA's statutory deadlines to act on the Fairbanks Serious Plan and Fairbanks 189(d) Plan were January 10, 2021, and June 15, 2022, respectively. In order to satisfy its mandatory duties under the CAA, the EPA proposed action on both the Fairbanks Serious Plan and Fairbanks 189(d) Plan on January 10, 2023. After holding a public hearing on March 7, 2023, accepting written comments, and considering said comments, the EPA is finalizing action on these plans.

*Comments:* The EPA received several comments requesting that it delay finalizing action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan. The primary basis for the request was to allow Alaska to complete modeling work necessary to support a future $SO_2$ precursor demonstration for major

[7] The EPA received 61 comments as part of oral testimony provided during EPA's March 7, 2023, public hearing and 103 comments as part of written testimony submitted to the docket.

[8] Letter from Region 10 Regional Administrator Casey Sixkiller to Aaron Schutt, President and CEO of Doyon, Limited, March 30, 2023. Included in the docket for this action.

[9] 85 FR 7760, February 11, 2020.

stationary sources. Many of the commenters presumed that the outcome of the precursor demonstration would show that $SO_2$ emissions from major stationary sources is not a significant contributor to $PM_{2.5}$ formation in the Fairbanks 2006 $PM_{2.5}$ Nonattainment Area. Other commenters stated generally that the EPA should avoid hasty decisions.

In its comments submitted during the public comment period, Alaska represented that it would complete the necessary modeling work and submit a revised SIP submission to the EPA by May 1, 2024. After the close of the public comment period, Alaska submitted additional comments via letter requesting an additional year from the date of the letter—until July 24, 2024—for Alaska to submit a revised SIP submission. In the latter letter, Alaska enclosed Regional Applied Research Effort (RARE) [10] meeting notes that include preliminary modeling results for the Fairbanks $PM_{2.5}$ Nonattainment Area based on continuing analysis of sulfate formation in the area. Alaska asserted that these preliminary modeling results indicate that major point sources of $SO_2$ emissions do not significantly contribute to particulate matter pollution during winter-time episodic conditions in the area. Alaska further asserted that the EPA has the discretion and authority to grant the State an additional year from July 24, 2023, to provide a revised SIP submission before taking final action on the already submitted Fairbanks Serious Plan and Fairbanks 189(d) Plan.

*Response:* Consistent with its obligations in CAA section 110(k)(2) to act on SIP submissions, the EPA is finalizing action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan in this action. By statute, the EPA is required to take final action within one year of a SIP submission being complete or complete by operation of law. The EPA has already delayed action well past the deadlines imposed by the CAA. Thus, further delay would not be consistent with these requirements. Contrary to Alaska's comments, the EPA does not have generic authority to modify the CAA deadlines that pertain to when States must submit SIP submissions, or to when the EPA must take action on such SIP submissions. Nor does the EPA have the authority to postpone the statutory deadline for the imposition of mandatory sanctions under CAA section 179, or its obligation to promulgate a Federal Implementation Plan pursuant to CAA section 110(c).

The CAA establishes a process for States to rectify SIP disapprovals via a new SIP submission.[11] The CAA does not impose a mandatory deadline for States to make a new SIP submission in response to an EPA disapproval. Rather, the CAA imposes mandatory sanctions on the State at 18 and 24 months following the effective date of the EPA's disapproval, and an obligation on the EPA to promulgate a FIP within two years of the effective date of such disapproval. To avoid the potential for mandatory sanctions and a FIP, Alaska should follow this process to make a timely corrective SIP submission to address the portions of the Fairbanks Serious Plan and Fairbanks 189(d) Plan that the EPA is disapproving. Alaska may include an optional $SO_2$ precursor demonstration in this SIP submission, if it provides a valid basis to establish that $SO_2$ emissions from either all sources or major stationary sources do not significantly contribute to $PM_{2.5}$ formation.

As discussed further in the following sections of this preamble, the EPA will review any future $SO_2$ precursor demonstration based on the statutory and regulatory requirements and EPA guidance. The EPA emphasizes that the Agency will review the entire weight-of-evidence of any precursor demonstration, not only the outputs of any particular air quality model. Moreover, delaying action on a SIP submission based on an anticipated future SIP submission that may or may not address identified SIP deficiencies would be arbitrary and inconsistent with the CAA's mandatory requirements.

The commenters advocating further delay of this final action, appeared to suggest that if the EPA finds that any portion of a SIP submission does not meet CAA requirements, then the EPA must delay fulfilling its statutory obligation in order to allow a State to revise the SIP submission, rather than act on the SIP submission. The EPA does not interpret the CAA as requiring this approach. Rather, the CAA requires the EPA to approve or disapprove a SIP submission within 12 months of the date on which it is complete.[12] To the extent that a State seeks to revise its approach in a SIP submission following a disapproval, it may do so consistent with the process and schedule provided for in CAA sections 179(a) and 110(c)(1). Thus, the EPA is satisfying its CAA obligation to take action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan.

*B. Environmental Justice Considerations*

Executive Order 12898 (59 FR 7629, February 16, 1994) requires that Federal agencies, to the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations. Additionally, Executive Order 13985 (86 FR 7009, January 25, 2021) directs Federal government agencies to assess whether, and to what extent, their programs and policies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups, and Executive Order 14008 (86 FR 7619, February 1, 2021) directs Federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.

In the Proposal, the EPA provided the results of a screening-level analysis using the EPA's environmental justice (EJ) screening and mapping tool (''EJSCREEN'').[13] The purpose of conducting this analysis and sharing the results was to provide information and context. The EPA did not base the proposed action nor this final action on environmental justice considerations. Rather, the EPA based the proposed action and this final action on a determination of whether the Fairbanks Serious Plan and Fairbanks 189(d) Plan meet applicable CAA requirements.

The EPA noted in the Proposal that the Fairbanks $PM_{2.5}$ Nonattainment Area has some of the highest $PM_{2.5}$ concentrations in the country and has been designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS since 2009. Residents in Fairbanks and North Pole have been subjected to a high pollution burden for many years. Other health and socioeconomic indices, identified in EJSCREEN, that are impacted by elevated ambient $PM_{2.5}$ concentrations include: low life expectancy (95–100 percentile) and asthma (90–95 percentile) in an area south of downtown Fairbanks, and population under age 5 (95–100 percentile) in various areas within the Fairbanks $PM_{2.5}$ Nonattainment Area. Most of Alaska,

[10] EPA's Regional Applied Research Effort (RARE) is an Office of Research and Development (ORD) program administered by the Office of Science Policy (OSP) that responds to the high-priority research needs of EPA Regions.

[11] CAA section 110(k)–(*l*) and 179. 40 CFR part 51, subpart F.

[12] CAA section 110(k)(2), 42 U.S.C. 7410(k)(2).

[13] 88 FR 1454, January 10, 2023, at pp.1455–1456. EJSCREEN provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN is available at *https://www.epa.gov/ejscreen/what-ejscreen.*

including the Fairbanks area, is considered ''medically underserved.'' [14]

A review of other environmental justice indices in EJSCREEN for the cities of Fairbanks, Alaska and North Pole, Alaska are below the 80th percentile, with some areas around downtown Fairbanks in the 80–90th percentile for the following indices: Superfund proximity, Hazardous waste proximity, and Underground storage tanks. No indices are above the 90th percentile for the Fairbanks $PM_{2.5}$ Nonattainment Area. EJSCREEN reports for Fairbanks and North Pole are included in the docket for this action.

The EPA noted in the Proposal that Alaska's expeditious submission of a new SIP to correct the deficiencies identified in this final action will ensure the plan meets CAA requirements and achieve attainment as expeditiously as practicable, consistent with the principles of environmental justice.

1. Comments and Responses

The EPA received multiple comments regarding environmental justice considerations.

*Comment:* Alaska argued that the EPA proposed to improperly shift the burden of addressing environmental justice from the EPA to the State of Alaska and that the EPA's proposed disapproval of certain elements of the Fairbanks Serious Plan and Fairbanks 189(d) Plan is inconsistent with the principles of environmental justice. As support, Alaska quoted from the EPA's statement in the proposed action: ''Alaska's expeditious submission of plan revisions that correct the deficiencies identified in this document will ensure the plan meets CAA requirements, and the measures in the plan when implemented achieves attainment as expeditiously as practicable. And in doing so, the plan revisions address harmful and disproportionate health and environmental effects on underserved and overburdened populations, consistent with the principles of environmental justice.''

Alaska also stated that Fairbanks residents already face severe economic challenges including utility costs, transportation, healthcare, internet connectivity, and food and that adopting and implementing additional control measures will exacerbate these challenges. The commenter stated that the EPA ignored the economic challenges faced by Fairbanks residents in its proposed rule.

*Response:* The EPA is finalizing action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan based on a determination of whether these plans meet applicable CAA requirements. The EPA did not propose to disapprove any portion of the Fairbanks Serious Plan and Fairbanks 189(d) Plan based on environmental justice considerations. The EPA clearly articulated that it was proposing to disapprove certain portions of the SIP submissions because of specifically identified deficiencies with respect to CAA requirements.

In the Proposal the EPA did, however, provide factual information concerning environmental justice concerns in the Fairbanks $PM_{2.5}$ Nonattainment Area as part of its own evaluation.[15] The EPA provided the results of EJSCREEN and evaluated the impacts of finalizing its proposal for informational purposes only. The EPA expressly stated that it did so ''to better understand the context of our proposed action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan on these communities.'' [16] Thus, the EPA disagrees with Alaska that it proposed to transfer the EPA's obligations under Executive Order 12898 to the State. Executive Order 12898 does not impose any such obligations on the State of Alaska. Alaska does, however, have the obligation to develop and submit implementation plans for the Fairbanks 2006 24-hour $PM_{2.5}$ Nonattainment Area that meet CAA requirements. In the Proposal, the EPA observed that the State doing so will reduce air pollution in the nonattainment area and thus reduce the burden on Fairbanks residents who experience some of the worst air pollution in the country.

The EPA also disagrees with Alaska that it ignored the economic challenges faced by Fairbanks residents in its proposed action. On the contrary, the EPA's proposed action and this final action, particularly with regards to the adequacy of the control strategy, was based on a thorough review of the technological and economic infeasibility of specific measures. In many cases, the EPA is finalizing approval of Alaska's rejection of certain control measures based in part on Alaska's demonstrations that the measures are infeasible due either to local circumstances or cost. Nevertheless, the State also oversimplifies this issue by claiming that the cost of imposing controls as required by the CAA to achieve actual attainment of the NAAQS in the Fairbanks $PM_{2.5}$ Nonattainment Area necessarily outweighs any public health benefits from such controls. The ongoing nonattainment of the NAAQS in the area likewise imposes costs, as measured in adverse public health impacts due to exposure to air pollution.

*Comment:* The EPA also received comments from environmental organizations representing citizens in the Fairbanks $PM_{2.5}$ Nonattainment Area concerning environmental justice issues. The commenter advocated that ''all possible measures should be taken to reduce and eliminate exposures.'' In particular, the commenter asserted that there should be additional Federal Reference Method (FRM) monitors in the area, as well as additional monitors near schools, elder care facilities, and hospitals to assess impacts on vulnerable communities. The commenter asked that regulators give attention to cumulative impacts from exposure in the area, such as from coal ash and per-and polyfluoroalkyl substances (PFAS) in drinking water. Finally, the commenter expressed concern that ''without the intervention of the EPA and Federal regulators, those who already bear a disproportionate burden will continue to experience the worst outcomes due to Alaska's inaction on this issue.''

*Response:* The EPA agrees with the commenter that there are environmental justice concerns in the Fairbanks $PM_{2.5}$ Nonattainment Area, as evidenced by facts indicated by the EJSCREEN analysis, such as the prevalence of asthma and life expectancy. The EPA anticipates that compliance with CAA requirements for nonattainment plans should result in improvements for purposes of environmental justice in this area. As explained in the preceding paragraphs of this preamble, however, the EPA discussed environmental justice impacts of this action in the Proposal for informational purposes only. The EPA's final action, with respect to both approvals and disapprovals, is based on the Agency's evaluation of the Fairbanks Serious Plan and Fairbanks 189(d) Plan with respect to applicable CAA requirements. The EPA will address the commenters specific concerns with respect to monitoring in the area in section II.C. of this preamble.

[14] Medically Underserved Areas are defined by the Health Resources and Services Administration as geographic areas with a lack of access to primary care services. For more information see: *https://bhw.hrsa.gov/workforce-shortage-areas/shortage-designation#mups.*

[15] See, *e.g.,* 88 FR 1454, January 10, 2023, at p. 1455 (''Executive Order 12898 . . . requires that Federal agencies, the greatest extent practicable and permitted by law, identify and address disproportionately high and adverse human health or environmental effects of their actions.'').

[16] 88 FR 1454, January 10, 2023, at pp. 1455–1456.

*C. Air Quality Monitoring in the Fairbanks $PM_{2.5}$ Nonattainment Area*

In the Proposal we described Alaska's air quality monitoring network for the Fairbanks $PM_{2.5}$ Nonattainment Area, and noted that it includes four regulatory monitor site locations. Table 1 of this preamble includes the site names, identification numbers, monitor data, and updated design values for the $PM_{2.5}$ monitor site locations in Fairbanks. In the Proposal, we explained that with EPA approval, the State discontinued the monitor location at the State Office Building and established the A Street monitor as a monitor location in 2019. Alaska established the A Street monitor location as a State or Local Air Monitoring Station (SLAMS) $PM_{2.5}$ monitoring station to characterize $PM_{2.5}$ concentrations in the Fairbanks portion of the nonattainment area. The EPA also explained in the Proposal that the Hurst Road monitor measures expected maximum concentrations for the nonattainment area.[17] Following is a table of air quality monitoring data in the Fairbanks $PM_{2.5}$ Nonattainment Area. The EPA notes this table was updated from the Proposal because monitoring data from 2022 became available since the Proposal was published. Therefore, Table 1 of this preamble includes the 2020–2022 24-hour Design Values, while the Proposal included the 2019–2021 24-hour Design Values.

TABLE 1—FAIRBANKS $PM_{2.5}$ MONITORING LOCATIONS AND RECENT SITE-LEVEL DESIGN VALUES

| Local site name | Site location | AQS ID | 98th percentile ($\mu g/m^3$) | | | |
|---|---|---|---|---|---|---|
| | | | 2020 | 2021 | 2022 ** | 2020–2022 24-hour Design Value ** |
| Hurst Road * | 3288 Hurst Road, North Pole | 02–090–0035 | 71.4 | 65.5 | 72.5 | 70 |
| A Street | 397 Hamilton Ave, Fairbanks | 02–090–0040 | 36.1 | *** 29.6 | *** 84.2 | 50 |
| NCore | 809 Pioneer Road, Fairbanks | 02–090–0034 | 26.6 | 27.5 | 76.3 | 43 |
| State Office Building | 675 7th Avenue, Fairbanks | 02–090–0010 | Site closed in 2019, monitor equipment relocated to A Street location. | | | |

* Monitor location previously referred to as North Pole Fire Station.
** Data in this table includes monitor days in 2022 that the state flagged as influenced by wildfires.
*** Monitor data in 2021 and 2022 impacted by data completeness issues.
Source: EPA 2022 AQS Design Value Report.

1. Comments and Responses

*Comment:* As noted in the prior paragraphs of this preamble, in the context of commenting on environmental justice concerns in the Fairbanks $PM_{2.5}$ Nonattainment Area, a commenter questioned the adequacy of monitoring in the area. The commenter stated that the environmental justice concerns highlight the need for more Federal Reference Monitors (FRM) in the Fairbanks $PM_{2.5}$ Nonattainment Area. Specifically, the commenter states that three monitors are insufficient for the nonattainment area, that Alaska should reestablish the State Office Building monitoring site, and establish additional sites, including in the Bjerremark neighborhood.

*Response:* As stated in Section II.B of this preamble, the EPA is finalizing action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan based on a determination of whether these plans meet applicable CAA requirements. Regarding the adequacy of the existing monitoring network, the EPA's review and approval of Alaska's $PM_{2.5}$ monitoring network for the Fairbanks 2006 $PM_{2.5}$ Nonattainment Area is outside the scope of this action. The EPA separately evaluates the adequacy of the State's monitoring network in the context of the Annual Monitoring Network Plans (ANP) developed and submitted by the State to the EPA pursuant to 40 CFR part 58, or in the context of an Infrastructure SIP submission for a new or revised NAAQS.

The commenter specifically questioned the State's decision to shut down the State Office Building monitor location and to relocate the monitor to the A Street monitor location. Alaska documented the basis for this change and requested the site relocation in a letter to the EPA dated May 15, 2019, per 40 CFR 58.14(b). The EPA approved the relocation of the State Office Building monitoring site to A Street and the establishment of the A Street station as a SLAMS station, including the site relocation, as meeting the requirements of 40 CFR part 58, Appendix D in a letter dated June 26, 2019.[18] This network modification was also documented in Alaska's 2019 ANP dated June 28, 2019,[19] which the EPA approved on November 21, 2019. Prior to submitting its 2019 ANP, Alaska offered a 32-day public comment period starting on May 23, 2019, during which members of the public could submit comments on the adequacy of the ANP.

The EPA notes that 40 CFR part 58, Appendix D sets the minimum monitoring network design criteria State ambient air networks must meet. Alaska submitted their 2022 ANP on June 28, 2022.[20] Prior to submitting the 2022 ANP, Alaska held a 30-day public comment period. On September 21, 2022, the EPA approved Alaska's 2022 ANP as meeting the requirements of 40 CFR part 58, Appendix D. The EPA is not revisiting its prior ANP approvals as part of this action. Most recently, Alaska submitted its 2023 ANP on June 30, 2023. The 2023 ANP was available for public comment from May 21–June 21, 2023. The EPA has 120 days to review and approve Alaska's 2023 ANP. Neither the CAA nor 40 CFR part 58, Appendix D preclude the State from exceeding these minimum requirements, including deploying

[17] For further details of the air quality monitoring network in the Fairbanks $PM_{2.5}$ Nonattainment Area, see the EPA's approval letters of Alaska's Annual Monitoring Network Plans for each year between 2019 to 2022, which are included in the docket for this action.

[18] Letter from Debra Suzuki, EPA Region 10 Air Planning, State/Tribal Coordination Branch to Barbara Trost, Alaska Department of Environmental Conservation, Air Monitoring and Quality Assurance Program, June 26, 2019, included in the docket for this action.

[19] 2019 Annual Air Quality Monitoring Network Plan, Alaska Department of Environmental Conservation, June 28, 2019, at p 33, available at: *https://dec.alaska.gov/air/air-monitoring/monitoring-plans.*

[20] 2022 Annual Air Quality Monitoring Network Plan, Alaska Department of Environmental Conservation, Final Draft, June 28, 2022.

additional monitors beyond the minimum number required.

If the commenter has specific concerns with the adequacy of the monitoring network, then the appropriate place to raise these issues is with the State during the public comment period for their next ANP. State ANPs typically are posted for public comment annually in late May to allow for a 30-day comment period before the ANP is due to the EPA on July 1. States are required to include and address all comments in their final ANP submission per 40 CFR 58.10(a)(1).

*Comment:* Several commenters raised concerns with the ambient air monitors. Specifically, one commenter stated that monitors were sited in the worst areas and not representative of air quality in the Fairbanks $PM_{2.5}$ Nonattainment Area. Other commenters asserted that the monitors are outdated, inaccurate below negative 20 degrees Fahrenheit, and do not distinguish between hydroxymethanesulfonate (HMS) from inorganic sulfate and organic mass and $PM_{2.5}$. These commenters stated this is creating problems with monitors in the North Pole and Fairbanks portions of the nonattainment area, respectively.

*Response:* As previously discussed, in this action, the EPA is evaluating whether the Fairbanks Serious Plan and Fairbanks 189(d) Plan meet applicable requirements for nonattainment plans. These commenters raised concerns about the adequacy of the monitor network. The EPA's review and approval of Alaska's $PM_{2.5}$ monitoring network for the Fairbanks $PM_{2.5}$ Nonattainment Area is outside the scope of this action. The EPA is finalizing action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan. These SIP submissions do not contain Alaska's monitoring plans. Such monitoring plans are contained in Alaska's ANP developed and submitted to the EPA pursuant to 40 CFR part 58. The EPA approved these monitoring network plans as meeting the requirements of 40 CFR part 58,[21] including that the monitoring stations are representative of area-wide air quality and that Alaska sited at least one monitoring station at neighborhood or larger scale in an area of expected maximum concentration.[22] Alaska also measures $SO_2$ at the Hurst Road site in North Pole, and speciated $PM_{2.5}$ at both Hurst Road and the Fairbanks National Core multipollutant (NCore) monitoring station.

Table 2 of this preamble contains details on the make and model of air samplers Alaska has deployed as part of the ambient air monitoring network in the Fairbanks $PM_{2.5}$ Nonattainment Area.

TABLE 2—AIR QUALITY SAMPLERS IN THE FAIRBANKS $PM_{2.5}$ NONATTAINMENT AREA

| Monitoring station | Air samplers |
|---|---|
| NCore/Fairbanks 02–090–0034 | Thermo Scientific Sequential Partisol 2025i (VSCC)–FRM.<br>Thermo Scientific Partisol 2000i (VSCC)–FRM. |
| A Street/Fairbanks 02–090–0040 | Thermo Scientific Sequential Partisol 2025i (VSCC)–FRM.<br>Met One BAM 1020 (SCC) non-FEM. |
| Hurst Road/North Pole 02–090–0035 | 2 Thermo Scientific Sequential Partisol 2025i (VSCC)–FRM.<br>Met One BAM 1020 (SCC) non-FEM. |

Although outside the scope of this action, and not relevant to the action on these SIP submissions, the EPA notes that it has approved each of these monitoring methods as meeting the FRM or Federal Equivalent Method (FEM) pursuant to 40 CFR part 53.[23] Furthermore, Alaska performs the required quality assurance and quality control measures pursuant to 40 CFR part 58, Appendix A.

Scientific studies being conducted as part of the Alaskan Layered Pollution and Chemical Analysis (ALPACA) research project being led by the University of Alaska Fairbanks are expected to focus on state-of-the-science measurements of Fairbanks air quality, including measurements of HMS. The EPA will consider the results of peer-reviewed journal articles from ALPACA studies that are relevant to Alaska's future annual network plans or a future SIP submission for the Fairbanks $PM_{2.5}$ Nonattainment Area.

### *D. Clean Air Act Requirements for $PM_{2.5}$ Serious Area Plans and Serious $PM_{2.5}$ Areas That Fail To Attain*

#### 1. Summary of Proposal

The Proposal contains a summary of the statutory and regulatory requirements for Serious area plans for $PM_{2.5}$ nonattainment areas and requirements for CAA section 189(d) plans and will not be restated here. In the Proposal, the EPA proposed combined requirements for $PM_{2.5}$ Serious areas and Serious areas that fail to attain. Specifically, the EPA explained in the Proposal that the CAA does not contain provisions that address precisely how a State should meet all of the planning requirements for a Serious nonattainment area, in the case where the area has already failed to attain the NAAQS by the Serious area attainment date, but before the State has met all of the planning requirements for Serious nonattainment areas. By extension, the CAA does not account for potential conflicts between the required plan provisions for Serious area plans and CAA section 189(d) plans, particularly with respect to the attainment projected inventory, attainment demonstration, reasonable further progress (RFP), and quantitative milestone (QM) plan provisions. These elements are required for all $PM_{2.5}$ nonattainment plans and are dependent on a single projected attainment date that complies with the statutory requirements governing the area. Thus, in the event that a State is obligated to submit both a Serious area plan and a CAA section 189(d) plan, a conflict arises between the applicable attainment date by which States should structure these plan provisions and against which the EPA should evaluate them.

Accordingly, the EPA proposed that it should evaluate any previously unmet Serious area plan requirements based on the current, applicable attainment date for nonattainment areas subject to CAA section 189(d), and not the original Serious area attainment date December

[21] 2022 Annual Air Quality Monitoring Network Plan, Alaska Department of Environmental Conservation, Final Draft, June 28, 2022. Letter from Debra Suzuki, Manager Air Planning, State/Tribal Coordination Branch, EPA Region 10, to Barbara Trost, Division of Air Quality, Alaska Department of Environmental Conservation, September 21, 2022.

[22] See Section 4.7.1(b) of Appendix D to 40 CFR part 58.

[23] U.S. Environmental Protection Agency, Center for Environmental Measurements & Modeling, Air Methods & Characterization Division, List of Designated Reference and Equivalent Methods, June 15, 2023, available at *https://www.epa.gov/system/files/documents/2023-06/List_of_FRM_FEM_%20June%202023_Final.pdf.*

31, 2019.[24] In this instance, in the Fairbanks 189(d) Plan, the State identified December 31, 2024, as the target attainment date that would represent attainment as expeditiously as practicable. Thus, the EPA proposed to evaluate the Fairbanks Serious Plan and Fairbanks 189(d) Plan submissions based on the combined requirements included in Table 3 of this preamble (Table 2 in the Proposal).

TABLE 3—COMBINED FAIRBANKS SERIOUS PLAN AND FAIRBANKS 189(d) PLAN REQUIREMENTS

| Description | Legal/regulatory requirement |
|---|---|
| **CAA planning requirements for $PM_{2.5}$ Serious Areas and Areas That Fail To Attain** | |
| Base year emissions inventory for Serious areas subject to CAA section 189(b) * | CAA section 172(c)(3);[25] 40 CFR 51.1008(b)(1). |
| Base year emissions inventory for areas subject to CAA section 189(d) | CAA section 172(c)(3); 40 CFR 51.1008(c)(1). |
| Attainment projected emissions inventory | CAA section 172(c)(1);[26] 40 CFR 51.1008(c)(2). |
| Serious area nonattainment plan control strategy that ensures that best available control measures (BACM), including best available control technologies (BACT), for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are implemented in the area. | CAA section 189(b)(1)(B);[27] 40 CFR 51.1010(a). |
| Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACT, BACM/BACT, and MSM[28] (if applicable)) that provide for attainment of the NAAQS as expeditiously as practicable and, from the date of such submission until attainment, demonstrate that the plan will at a minimum achieve an annual five percent reduction in emission of direct $PM_{2.5}$ or any $PM_{2.5}$ plan precursor. The State must reconsider and reassess any measures previously rejected by the State during the development of any Moderate area or Serious area attainment plan control strategy for the area. | CAA section 189(d);[29] 40 CFR 51.1010(c). |
| Attainment demonstration and modeling | CAA sections 188(c)(2) and 189(b)(1)(A);[30] 40 CFR 51.1003(c) and 51.1011. |
| Reasonable further progress (RFP) provisions | CAA section 172(c)(2);[31] 40 CFR 51.1012. |
| Quantitative milestones | CAA section 189(c);[32] 40 CFR 51.1013. |
| An adequate evaluation by the State of sources of all four $PM_{2.5}$ precursors for regulation, and implementation of controls on all such precursors, unless the State provides a demonstration establishing that it is either not necessary to regulate a particular precursor in the nonattainment area at issue in order to attain by the attainment date, or that emissions of the precursor do not make a significant contribution to $PM_{2.5}$ levels that exceed the standard **. | CAA section 189(e);[33] 40 CFR 51.1006. |
| Contingency measures applicable to Serious areas subject to CAA section 189(b) | CAA section 172(c)(9);[34] 40 CFR 51.1014. |
| Contingency measures applicable to Serious areas subject to CAA section 189(d) | CAA section 172(c)(9); 40 CFR 51.1014. |
| Nonattainment new source review provisions | CAA sections 172(c)(5), 189(b)(3), 189(d), and 189(e), and 40 CFR 51.165 40 CFR 51.1003(b)(1)(viii), and 40 CFR 51.1003(c)(1)(viii).[35] |

** EPA finalized approval of this requirement on September 24, 2021 (86 FR 52997).*
*** EPA finalized approval of this requirement applicable to Serious areas subject to CAA section 189(b) on September 24, 2021 (86 FR 52997).*

2. Final Rule

The EPA is finalizing the approach to evaluating the Fairbanks Serious Plan and Fairbanks 189(d) Plan submissions as proposed.

3. Comments and Responses

We received three comments regarding the proposed requirements. One commenter agreed with the EPA's interpretation of the CAA with respect to the attainment date. The second commenter opposed the EPA's interpretation of the control strategy requirement for CAA section 189(d) areas. The final commenter opposed the EPA's statutory and constitutional authority to regulate air quality in the State of Alaska.

*Comment:* In its comment, Alaska stated that because CAA section 189(d) does not itself supply a specific attainment date for CAA section 189(d) areas, the EPA interprets the CAA to impose the attainment date requirements of CAA sections 172 and 179, and as interpreted in 40 CFR 51.1004(a)(3), rather than the date imposed in CAA section 188(c)(2),[36] and as interpreted in 40 CFR 51.1004(a)(2). Alaska agrees with the EPA's interpretation of the CAA and that 51.1004(a)(3) applies, which provides for 5 years past the finding of failure to attain for the Serious area and may be extended up to 10 years if deemed appropriate by the Administrator.

*Response:* The EPA agrees with Alaska that the attainment date for the Fairbanks $PM_{2.5}$ nonattainment area is governed by CAA sections 172 and 179 and 40 CFR 51.1004(a)(3), which require that the new attainment date must be as expeditious as practicable, but no later than five years from the date of publication in the **Federal Register** of the EPA's determination that the area failed to attain the relevant NAAQS. In addition, the EPA may extend the attainment date by up to five additional years (thus up to 10 years from the date of publication of the notice of finding of failure to attain by the applicable attainment date for the area) if the EPA deems it appropriate ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.''

The EPA notes that any extension to the attainment date pursuant to CAA section 172(a)(2)(A) must be predicated on a SIP submission that demonstrates that attainment within five years from

[24] 86 FR 53150, September 24, 2021, at p. 53155. In accordance with CAA section 172(a)(2) and 179(d) and 40 CFR 51.1004(a)(3), ''The projected attainment date for a Serious $PM_{2.5}$ nonattainment area that failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date shall be as expeditious as practicable, but no later than 5 years following the effective date of the EPA's finding that the area failed to attain by the original Serious area attainment date, except that the Administrator may extend the attainment date to the extent the Administrator deems appropriate, for a period no greater than 10 years from the effective date of the EPA's determination that the area failed to attain, considering the severity of nonattainment and the availability and feasibility of pollution control measures.''

[25] 42 U.S.C. 7502(c)(3).

[26] 42 U.S.C. 7502(c)(1).

[27] 42 U.S.C. 7513a(b)(1)(B).

[28] MSM is applicable if the EPA has previously granted an extension of the attainment date under CAA section 188(e) for the nonattainment area and NAAQS at issue. The EPA denied Alaska's request to extend the Serious area attainment date for the Fairbanks Serious Nonattainment Area.

[29] 42 U.S.C. 7513a(d).

[30] 42 U.S.C. 7513(c)(2) and 7513a(b)(1)(A).

[31] 42 U.S.C. 7502(c)(2).

[32] 42 U.S.C. 7513a(c).

[33] 42 U.S.C. 7513a(e).

[34] 42 U.S.C. 7502(c)(9).

[35] 42 U.S.C. 7502(c)(5), 7513a(b)(3), 7513a(d), and 7513a(e). In the Proposal, the EPA inadvertently omitted reference to CAA sections 172(c)(5), 189(d), and 189(e), 40 CFR 51.1003(b)(1)(viii), and 40 CFR 51.1003(c)(1)(viii).

[36] The EPA understands the intended reference here to be CAA section 172(c).

the date of publication in the **Federal Register** of the EPA's determination that the area failed to attain the relevant NAAQS is infeasible and identifies the most expeditious date by which attainment is feasible considering the severity of nonattainment and the availability and feasibility of pollution control measures. Absent such a SIP submission, the EPA does not have a basis to extend the attainment date nor to identify the most expeditious attainment date.

*Comment:* Another commenter disagreed with the EPA's determination that Alaska did not need to identify, adopt, and implement MSM as part of the Fairbanks Serious Plan or Fairbanks 189(d) Plan. The commenter stated that the EPA determined that MSM is not applicable to the Serious Plan or the 189(d) plan because MSM ''is applicable if the EPA has previously granted an extension of the attainment date under CAA section 188(e)'' and ''EPA denied Alaska's [previous] request to extend the Serious area attainment date.'' However, the commenter stated that CAA section 188(e) provides that Alaska must demonstrate that its SIP includes MSM before an extension may be granted, not if an extension has been ''previously granted.'' The commenter asserted that an approval of the Fairbanks Serious Plan under a 2024 attainment date would amount to a de facto extension of the attainment date, and that MSM should be applicable to the parts of the SIP submission being evaluated under Serious SIP requirements.

*Response:* The EPA disagrees with the commenter that the State is required to identify, adopt, and implement MSM under these circumstances. In accordance with CAA section 188(e) and 40 CFR 51.1005(b), upon application by the State, the EPA may extend the attainment date for a Serious area beyond the date required by CAA section 188(c)(2) and 40 CFR 51.1004 if, inter alia, the State demonstrates that the attainment plan for the area includes MSMs that are included in the attainment plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. Thus, identifying, adopting, and implementing MSM is a necessary condition of the EPA granting an extension to the Serious area attainment date under CAA section 188(e). MSM is not, however, an independent requirement for all Serious area plans under CAA section 189(b), nor for all CAA section 189(d) plans.

The CAA provides for the scenario whereby the State either never applies for an attainment date extension under CAA section 188(e), or the State requests an extension but the EPA denies such request because the State failed to meet the conditions in CAA section 188(e). If either of these scenarios occur and the State fails to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the Serious area attainment date, then the statutory consequence is that the State is subject to the planning requirements of CAA section 189(d).[37] A State would only have to comply with the MSM requirements of CAA section 188(e) if the State had sought, and the EPA had granted, an extension of the Serious area attainment date and then failed to attain by that extended attainment date.

On September 2, 2020, the EPA determined that the Fairbanks $PM_{2.5}$ Nonattainment Area failed to attain by the Serious area attainment date.[38] As part of that same action, the EPA denied Alaska's request to extend the Serious area attainment date under CAA section 188(e). As a result of this action, the State became subject to the requirements of CAA section 189(d). Neither CAA section 189(d) nor the $PM_{2.5}$ SIP Requirements Rule under these circumstances require that the State SIP include MSM, unless the EPA previously approved the State's request to extend the Serious area attainment date under CAA section 188(e). The regulation at 40 CFR 51.1010(c)(2)(i) provides that: ''For the sources and source categories represented in the emission inventory for the nonattainment area, the state shall identify the most stringent measures for reducing direct $PM_{2.5}$ and $PM_{2.5}$ plan precursors adopted into any SIP or used in practice to control emissions in any state, *as applicable.*'' (Emphasis added). As made clear in the response to comments to the $PM_{2.5}$ SIP Requirements Rule, the EPA included the phrase ''as applicable'' in this regulation to make clear that a State is only required to identify and impose MSM if the EPA has previously extended the Serious area attainment date.[39] Thus, the requirement to identify, adopt, and implement MSM as part of the control strategy for this NAAQS does not apply to the Fairbanks $PM_{2.5}$ Nonattainment Area.[40]

*Comment:* One commenter questioned the Federal government's authority generally and the EPA's authority and jurisdiction specifically to regulate air quality in the State of Alaska. The commenter stated that the Bill of Rights contains restrictions on the Federal government's power and that the Tenth Amendment to the United States Constitution states that the power not delegated to the United States nor prohibited to the States are reserved to the States and the people. The commenter further stated: ''There's nowhere in the constitution that talks about a multitude of alphabet agencies the Federal government has created, and you actually are the ones that are in violation. You're talking about how we're in violation of your air standards, but you're the agency that's in violation of our constitutional limitations against you. You have no jurisdiction. You're violating due process in separat[ion] of powers.''

*Response:* The EPA disagrees with the commenter that the Federal government generally, and the EPA specifically, lack the authority to regulate air quality in Alaska as in all other States. In the CAA, Congress authorized the EPA to exercise numerous obligations related to air quality, including establishing the NAAQS, designating areas that fail to attain the NAAQS, and reviewing and approving or disapproving State SIP submissions required to provide for attainment and maintenance of the NAAQS.[41] Congress also granted the EPA general rulemaking authority to administer and implement the CAA.[42] The United States Supreme Court has acknowledged the Federal government's and the EPA's authority to regulate national air quality in the manner laid

[37] The $PM_{2.5}$ SIP Requirements Rule at 40 CFR 51.1005(c) implements this statutory prescription, stating: ''If a Serious area fails to attain a particular $PM_{2.5}$ NAAQS by the applicable Serious area attainment date, the area is then subject to the requirements of section 189(d) of the Act, and, for this reason, the state is prohibited from requesting an extension of the applicable Serious area attainment date for such area.''

[38] Determination of Failure To Attain by the Attainment Date and Denial of Serious Area Attainment Date Extension Request; AK: Fairbanks North Star Borough 2006 24-Hour Fine Particulate Matter Serious Nonattainment Area, 85 FR 54509, September 2, 2020.

[39] ''In the event the area previously had received an extension of the Serious area attainment date pursuant to section 188(e), the reevaluation of control measures referenced in section 51.1010(c)(2) should include a reevaluation of MSM. (For this reason, section 51.1010(c)(2)(i) refers to the reevaluation of MSM ''as applicable.'') If, however, the area did not previously request and receive an extension of the Serious area attainment date under section 188(e), the MSM requirement does not apply.'' Response to Comments on the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, July 29, 2016, Docket No. EPA–HQ–OAR–2013–0691–0145 at p. 155.

[40] The EPA notes, however, that the state needs to consider implementing MSMs as contingency measures.

[41] CAA sections 107, 109, 110, 171–192, 42 U.S.C. 7407, 7409, 7410, 7501–4514a; see also *Sierra Club* v. *EPA,* 671 F.3d 955, 958–959 (9th Cir. 2012).

[42] CAA section 301(a), 42 U.S.C. 7601(a) (''The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.'').

out in the Clean Air Act.[43] Thus, the EPA has the statutory authority and obligation to act on Alaska's SIP submissions for the Fairbanks $PM_{2.5}$ Nonattainment Area. Furthermore, the EPA's exercise of such authority—either in general or specific to these Plans—is within the Federal government's constitutional authorities and does not violate any individual constitutional or civil rights.

*E. Review of the Fairbanks Serious Plan and Fairbanks 189(d) Plan*

1. Emission Inventories

i. Summary of Proposal

The EPA proposed to approve the 2019 base year emissions inventory on the basis that it met the requirements of CAA section 172(c)(3) and 40 CFR 51.1008. The EPA stated that calendar year 2019 was an appropriate base year for the Fairbanks 189(d) Plan because it was one of the three years for which the EPA used monitored data to determine that the area failed to attain the $PM_{2.5}$ NAAQS by the applicable Serious area attainment date.[44] The base year emissions inventory was a seasonal inventory, based on two historical meteorological episodes judged by the EPA to be representative of the range of meteorological conditions that lead to exceedances of the 24-hour NAAQS. This was an appropriate temporal scope for a base year emissions inventory. Exceedances of the 24-hour NAAQS, other than those exceedances attributable to non-anthropogenic emissions, occur primarily in the colder months during fall, winter, and spring when home heating sources are widely used. The State provided a justification that for purposes of the emissions inventory, the baseline emissions inventory season should be from October 1 to March 31, and the EPA agrees with this.

The EPA proposed to disapprove the projected emissions inventory on the basis that the Fairbanks 189(d) Plan did not satisfy the requirement of 40 CFR 51.1008(c)(2) regarding an attainment projected emission inventory for the most expeditious attainment date. The Fairbanks 189(d) Plan contained an attainment projected emissions inventory, and Alaska projected attainment by December 31, 2024. The EPA noted that the control strategy does not contain all required control measures. Therefore, the attainment projected emissions inventory does not necessarily take into consideration all required emissions reductions. Because the State did not properly evaluate and adopt control measures for all relevant source categories and pollutants, it was neither possible nor appropriate to determine that the projected emission inventory was consistent with the level of emissions needed to meet the overarching requirement for attainment of the NAAQS in the area as expeditiously as practicable. We do note that on September 25, 2023, Alaska withdrew is $SO_2$ BACT determinations and analysis for major stationary sources in the Fairbanks $PM_{2.5}$ Nonattainment Area.[45]

In addition, the EPA observed that Alaska's proposed attainment date of 2024 is predicated on a modeling platform that is in need of improvement, including development of a quantitative performance evaluation for the Hurst Road monitor in North Pole that is based on recent meteorological episodes and $PM_{2.5}$ speciation data.

ii. Final Rule

The EPA is finalizing approval of the base year 2019 emission inventory. The EPA is finalizing disapproval of the projected attainment year emission inventory.

iii. Comments and Responses

*Comment:* Alaska stated that the EPA should avail itself of the opportunity to incorporate new data with the modeling updates described in Alaska's Technical Analysis Protocol which, until this year, were unavailable. The State suggested that the cumulative effect of new data combined with the extensive modeling updates will strengthen planning documents, improve accuracy, and expedite attainment.

*Response:* The EPA's final action is based on the SIP submissions before it. As discussed in section II.A of this preamble, the EPA has a mandatory duty to approve, disapprove, or conditionally approve the Fairbanks Serious Plan and Fairbanks 189(d) Plan. Alaska intended these submissions to meet applicable CAA requirements for Serious areas and Serious areas that fail to attain by the Serious area attainment date. Within these SIP submissions, Alaska based the attainment projected emissions inventories and modeled attainment demonstrations on the 2008 episodes. Alaska thus represented that these episodes met CAA requirements for the attainment projected inventory.

The EPA is disapproving the attainment projected emissions inventory and modeled attainment demonstration in the Fairbanks 189(d) Plan for the reasons stated in the Proposal and in this final action. To the extent that the State elects to incorporate new data and new modeling updates in a subsequent SIP submission, it may do so. The EPA anticipates that the State will make a new SIP submission to address the deficiencies that required disapproval in this action. The EPA notes that CAA sections 110 and 179 provide a process whereby States may rectify disapprovals through a subsequent SIP submission and thereby avoid the potential for mandatory sanctions and a FIP. To that end, the EPA has been coordinating with Alaska on the monitoring and modeling analyses described by the State. The EPA will review the modeled attainment demonstration, and the associated attainment projected emission inventory, as updated by the State in subsequent SIP submissions for compliance with applicable requirements.

*Comment:* GVEA stated that the trends and changing nature of residential wood combustion need further attention. GVEA noted that both the availability and projected demand for dried wood need to be solidly developed and included in the projected emissions inventory. GVEA stated that since residential wood combustion is demonstrated to be an important contributor to $PM_{2.5}$ concentrations in the Fairbanks $PM_{2.5}$ Nonattainment Area, that trend and associated emissions reductions need to be assessed and included in a robust modeling analysis that demonstrates compliance with the $PM_{2.5}$ Ambient Air Quality Standards.

*Response:* The EPA agrees with GVEA that usage of residential wood combustion and the availability of dry wood are key factors that the State needs to consider in an updated assessment of control measures and expeditious attainment. We do note that Aurora Energy has established one dry wood kiln in Fairbanks (using the waste heat from the Chena Power Plant) with plans to expand operations. Ultimately,

[43] *Train* v. *Nat'l Resources Def. Council, Inc.,* 421 U.S. 60, 64–65 (1975) (''[The 1970 Clean Air Act] Amendments sharply increased Federal authority and responsibility in the continuing effort to combat air pollution.''); *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 249–250 (1976) (''[T]he Amendments reflect congressional dissatisfaction with the progress of existing air pollution programs and a determination to ''tak(e) a stick to the States,'' in order to guarantee the prompt attainment and maintenance of specified air quality standards. The heart of the Amendments is the requirement that each State formulate, subject to EPA approval, an implementation plan designed to achieve national primary ambient air quality standards those necessary to protect the public health.'').

[44] 85 FR 54509, September 2, 2020.

[45] ''Fairbanks SIP submissions for the Serious area and 189(d) plans'' Letter from Emma Pokon, Acting Commissioner, Alaska Department of Environmental Conservation, to Casey Sixkiller, Regional Administrator, EPA Region 10, September 25, 2023. Included in the docket for this action.

we anticipate that as part of a subsequent SIP submission, Alaska will evaluate the contributions of emissions from the solid fuel burning source category and evaluate the various emission reductions attributable to the suite of control measures, including the dry wood requirements.

*Comment:* A number of commenters stated that much of the pollution in Fairbanks comes from overseas from countries such as Russia and China.

*Response:* International contributions to air quality in the Fairbanks $PM_{2.5}$ Nonattainment Area are part of the boundary conditions input to the photochemical model that is used to evaluate relevant sources. Neither the State nor the EPA have identified a significant contribution from overseas emissions to ambient $PM_{2.5}$ levels in the area. Absent further evidence, the EPA will continue to assess the impacts of sources of emissions in the area, and control requirements for those sources, as identified in Alaska's analysis.

2. Pollutants Addressed

i. Summary of Proposal

Alaska submitted as part of the Fairbanks 189(d) Plan comprehensive precursor demonstrations for existing sources of $NO_X$ and VOC emissions. Alaska did not submit a precursor determination for existing sources of $SO_2$ and $NH_3$ emissions.[46] Moreover, Alaska did not submit a nonattainment new source review (NNSR) precursor demonstration for any $PM_{2.5}$ precursor. Alaska regulates all $PM_{2.5}$ precursors under its NNSR program. The EPA approved Alaska's NNSR program on August 29, 2019 (84 FR 45419). In the Proposal, the EPA evaluated the State's precursor demonstration included in the Fairbanks 189(d) Plan consistent with the $PM_{2.5}$ SIP Requirements Rule and the recommendations in the May 30, 2019, $PM_{2.5}$ Precursor Demonstration Guidance.[47]

The EPA proposed to approve the State's demonstration that $NO_X$ and VOC emissions do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2006 24-hour $PM_{2.5}$ NAAQS in the Fairbanks $PM_{2.5}$ Nonattainment Area for purposes other than nonattainment new source review (NNSR) program requirements. As a result, Alaska would not be required to identify and impose control measures for $NO_X$ and VOC emission sources in Fairbanks, other than for NNSR purposes. Likewise, the State would not be required to impose motor vehicle emission budgets for $NO_X$ and VOC emissions.

The EPA noted that the concentration-based modeling analysis of VOC emissions demonstrates that anthropogenic VOCs have impacts on $PM_{2.5}$ concentrations in the Fairbanks $PM_{2.5}$ Nonattainment Area that are well below the 1.5 microgram per cubic meter ($\mu g/m^3$) significance threshold. The EPA also proposed that the weight of evidence presented in the Fairbanks Serious Plan and Fairbanks 189(d) Plan suggested that $NO_X$ emitted from all sources is an insignificant contributor to local $PM_{2.5}$ concentrations.

ii. Final Rule

The EPA is finalizing approval of Alaska's $PM_{2.5}$ precursor demonstrations for $NO_X$ and VOC emissions included in the Fairbanks Serious and 189(d) Plans. The EPA reiterates that Alaska did not submit a precursor determination for $SO_2$ and $NH_3$ emissions, which remain subject to control requirements under subparts 1 and 4 of part D, title I of the Act. Similarly, Alaska did not submit NNSR precursor demonstrations. Thus, consistent with its approved SIP, the State will continue to regulate $NO_X$, $SO_2$, VOCs, and $NH_3$ as precursors to $PM_{2.5}$ with respect to NNSR program requirements.

iii. Comments and Responses

*Comment:* Citizens for Clean Air, a project of Alaska Community Action on Toxics, and the Sierra Club Alaska Chapter commented that each day, 15.73 tons of $NO_X$ are emitted in Fairbanks. These compounds are ''precursors'' that undergo chemical reactions to form $PM_{2.5}$. In September 2021, the EPA approved Alaska's 2019 precursor demonstrations for VOCs and $NO_X$, finding that Alaska had sufficiently demonstrated that VOCs and $NO_X$ do not significantly contribute to the $PM_{2.5}$ problem in Fairbanks. To meet its CAA section 189(d) obligations, the State submitted an updated precursor analysis in 2020. This updated analysis included one new $NO_X$ model run, and Earthjustice noted that the EPA proposed to find that the weight of evidence suggested that $NO_X$ emitted from all sources is an insignificant contributor to local $PM_{2.5}$ concentrations.

The commenters disagreed with the EPA's approval of Alaska's new $NO_X$ model run as satisfying precursor demonstration requirements for the purposes of CAA 189(d). The commenters noted that this modeling consisted of ''a 50% knock-out quantitative analysis'' for $NO_X$ emissions. Of note, when the State uses the terminology ''50% knock-out'' analysis, they are referring to a modeling evaluation where a model run that includes all emission sources in the nonattainment area (a baseline model run) is compared to a model run where 50% of the $NO_X$ emissions from anthropogenic sources in the nonattainment area have been removed. Based on this modeling, the State demonstrated that ''the maximum 24-hour average $PM_{2.5}$ concentrations due to anthropogenic $NO_X$ emissions were $\leq$ 1.22 $\mu g/m^3$ in 2019 for all model grid cells containing regulatory monitors, and therefore were below the 1.5 $\mu g/m^3$ threshold.'' However, the commenter noted that the EPA's Precursor Demonstration Guidance recommends ''modeling reductions of 30–70 percent'' for such sensitivity analyses. Earthjustice questioned why, when a 50% knock-out analysis showed concentration results up to 1.22 $\mu g/m^3$—approaching the 1.5 $\mu g/m^3$ threshold—it was not appropriate to require a 70% knock-out analysis, or an emissions control analysis to support the demonstration. The commenters noted that the State has previously run 75% knock-out demonstrations, and there is no adequate justification for its choice not to run a 70–75% knock-out demonstration as part of the Fairbanks 189(d) Plan. The commenters concluded that the EPA should require Alaska to better justify its rejection of the need to regulate $NO_X$.

*Response:* While the State only completed one new model run (a run with a 50% reduction of $NO_X$ emissions from anthropogenic sources) for the precursor demonstration in the Fairbanks 189(d) Plan, the EPA also considered the $NO_X$ precursor model runs from the Fairbanks Serious Plan when evaluating the $NO_X$ precursor demonstration. The State decided it did not need to re-run all of the Fairbanks Serious Plan precursor demonstration model runs because there were not significant changes in emissions or air quality in the Fairbanks $PM_{2.5}$ Nonattainment Area or to the modeling platform between the Fairbanks Serious Plan and the Fairbanks 189(d) Plan. When evaluating the $NO_X$ precursor demonstration submitted by the State, the EPA reviewed several model runs,

[46] According to Alaska, there is a negligible amount of $NH_3$ associated with coal-fired boilers, fuel oil-fired turbines or diesel engine emissions and this amount is not in the emissions inventory. *See* State Air Quality Control Plan, Vol. II, Chapter III.D.7.7.8.1.

[47] Memorandum from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, to Regional Air Division Directors, Regions 1—10, Fine Particulate Matter ($PM_{2.5}$) Precursor Demonstration Guidance, May 30, 2019.

focusing on both the average and maximum modeled $PM_{2.5}$ concentrations.

First, a major source precursor analysis where a baseline model run was compared to a control model run with a 100% reduction of $NO_X$ emissions from major stationary sources (presented in the Fairbanks Serious Plan).

Second, a comprehensive precursor analysis where a baseline model run was compared to a control model run with a 100% reduction of $NO_X$ emissions from anthropogenic sources (presented in the Fairbanks Serious Plan).

Third, a sensitivity precursor analysis where a baseline model run was compared to a control model run with a 75% reduction of $NO_X$ emissions from anthropogenic sources (presented in the Fairbanks Serious Plan).

Fourth, a sensitivity precursor analysis where a baseline model run was compared to a control model run with a 50% reduction of $NO_X$ emissions from anthropogenic sources (presented in the Fairbanks 189(d) Plan and referenced by the commenter).

In addition, the EPA reviewed supplementary information related to the model runs (*e.g.,* changes in emissions inventories between 2013 and 2019, which were the two years used for the precursor model runs). The EPA also considered source apportionment analyses that have been conducted for the Fairbanks area (Kotchenruther, 2016; Ward, 2013).[48]

Based on all of these data sources, the EPA agrees with the State that $NO_X$ is not a significant contributor to $PM_{2.5}$ measured in the nonattainment area.

3. Control Strategy

Alaska submitted as part of the Fairbanks Serious Plan BACM and BACT analyses intended to identify and evaluate potential BACM and BACT controls for the stationary area sources and source categories, stationary point sources, and mobile sources in the baseline emissions inventory. Alaska submitted an update to the analysis of control measures for stationary area sources and mobile sources in the Fairbanks 189(d) Plan. Alaska did not update the analysis for stationary point sources, including major stationary sources.

The EPA proposed to approve Alaska's determination that there are no specific $NH_3$ emission controls for the major stationary or area sources or source categories in the baseline emissions inventory discussed in section II.E.2 of this preamble and that certain measures designed to reduce direct $PM_{2.5}$ emissions also reduce $NH_3$ emissions. Thus, the EPA proposed to determine that Alaska has satisfied the requirement to identify, adopt and implement BACM and BACT for the sources and source categories of $NH_3$ discussed in section II.E.2 of this preamble. Thus, the EPA proposed to determine that no additional controls of $NH_3$ are required to meet the BACM or BACT requirements for these specific source categories for the Fairbanks Serious Plan or the Fairbanks 189(d) Plan. The EPA also proposed to approve the State's SIP submissions with respect to BACM and BACT requirements for pot burners, fuel oil boilers, incinerators, and portions of the solid fuel heating device and mobile emission source categories. The EPA proposed to disapprove the State's SIP submissions with respect to BACM and BACT requirements for wood seller requirements, coal-fired heating devices, coffee roasters, charbroilers, used oil burners, weatherization and energy efficiency, oil-fired heating devices, and portions of the mobile emission source category.

The EPA is finalizing partial approval of portions of Alaska's BACM and BACT analyses and associated adopted and submitted rules to impose the control measures, as described in table 4 of this preamble. The EPA is finalizing approval of the BACM and BACT analysis for which the EPA proposed approval, including Alaska's BACM determinations for $NH_3$ controls. Based on comments, the EPA is also finalizing approval of certain portions of Alaska's supplemental BACM and BACT analysis for stationary areas sources and mobile sources, as explained further in section II.E.3 of this preamble. Alaska submitted comments on the Proposal that provided additional analysis to demonstrate that that potential control measures for certain source categories are either technologically or economically infeasible at this time. Measures that the EPA agrees are infeasible in the area at this time include: an ultra-low sulfur diesel (ULSD) requirement for residential and commercial fuel oil combustion; controls on charbroilers and used oil burners; and certain transportation measures. The EPA is finalizing disapproval of the remaining portions of Alaska's BACM analysis and adopted rules as proposed. Table 4 of this preamble provides an overview of the final action.

TABLE 4—SUMMARY OF THE EPA'S FINAL EVALUATION OF ALASKA'S BACM AND BACT ANALYSIS FOR STATIONARY AREAS SOURCES AND MOBILE SOURCES

| Emissions source category | EPA evaluation of specific BACM measures | State rules relevant to adopted BACM | Specific BACM measures, as identified by Alaska |
|---|---|---|---|
| Solid fuel burning | Approve: wood-fired heating device requirements and resulting emissions. | 18 AAC 50.075, except (d)(2); 18 AAC 50.077, except (g) and (q). | BACM Measures: 1–30, 33–47, 63, 65–66, R1, R4–R7, R9–R12, R15, R16–R17, R29. |
| | Disapprove: Wood seller/dry wood requirements; coal-fired heating devices. | 18 AAC 50.076(k); 18 AAC 50.079(d), (e), and (f). | BACM Measures: 31–32; 48–49. |
| Residential and commercial fuel oil combustion. | Approve: pot burners, waste oil; fuel oil boilers; ULSD as heating oil (economically infeasible). | 18 AAC 50.078(b) | BACM Measures: 51, 52–53, 61–62. |
| Small commercial area sources. | Approve: incinerators (no sources identified); charbroilers (economically infeasible); used oil burners (economically infeasible). | 18 AAC 50.078(c) | BACM Measures: 68–70. |
| | Disapprove: coffee roasters | 18 AAC 50.078(d) | BACM Measure: 67. |
| Energy efficiency measures | Disapprove: weatherization and energy efficiency | | BACM Measure: 64. |
| Emissions from mobile sources. | Approve: CARB standards; school bus retrofits; road paving; other transportation measures; vehicle idling- heavy-duty vehicles (economically infeasible). | | BACM Measures: 54–59, 60 (in part), R20. |

[48] Kotchenruther (2016). Source apportionment of $PM_{2.5}$ at multiple Northwest U.S. sites: Assessing regional winter wood smoke impacts from residential wood combustion. *Atmospheric Environment,* 142, 210–219. Available at: *https://doi.org/10.1016/j.atmosenv.2016.07.048.* Ward (2013). The Fairbanks, Alaska $PM_{2.5}$ Source Apportionment Research Study Winters 2005/2006–2012/2013, and Summer 2012. University of Montana-Missoula Center for Environmental Health Sciences. Available at: *https://dec.alaska.gov/air/anpms/communities/fbks-pm2-5-science/.*

TABLE 4—SUMMARY OF THE EPA'S FINAL EVALUATION OF ALASKA'S BACM AND BACT ANALYSIS FOR STATIONARY AREAS SOURCES AND MOBILE SOURCES—Continued

| Emissions source category | EPA evaluation of specific BACM measures | State rules relevant to adopted BACM | Specific BACM measures, as identified by Alaska |
|---|---|---|---|
| | Disapprove: light-duty vehicle idling at schools and commercial establishments. | ..... | BACM Measure: 60 (in part). |

i. Solid Fuel Burning

a. Summary of Proposal

The solid fuel burning source category includes a number of measures that the State adopted as part of the Fairbanks Serious Plan and relied on in the Fairbanks 189(d) Plan. These measures address direct $PM_{2.5}$, $SO_2$, and $NH_3$ emissions.

Alaska adopted a number of regulations based on the BACM review for this source category.[49] We proposed to find that Alaska's analysis and adoption of control measures for this source category meet BACM and BACT requirements for $PM_{2.5}$ and $SO_2$ emissions. We also proposed to approve Alaska's analysis that found no available controls that specifically reduce $NH_3$.[50] We noted that the EPA has previously approved as federally enforceable SIP-strengthening many of the control measures submitted as part of the Fairbanks Serious Plan and prior SIP submissions in 2018 as part of a separate action (86 FR 52997, September 24, 2021).

We noted that Alaska's two-stage woodstove curtailment program, included in the Fairbanks Emergency Episode Plan,[51] is at least as stringent as comparable curtailment programs in Idaho, Utah, and California. Alaska accounts for the differences in natural gas availability, seasonal climate conditions, and woodstove changeout incentives in establishing the two-stage thresholds at 20 μg/m$^3$ (Stage 1) and 30 μg/m$^3$ (Stage 2), respectively. Alaska also has an advisory level set at 15 μg/m$^3$ as part of the curtailment program. Alaska has placed further limitations on the No Other Adequate Source of Heat (NOASH) exemption waivers that limit applicability to those who have economic needs based on objective criteria and limited the number of years NOASH waivers are available. Therefore, we proposed to approve the wood stove curtailment program and associated updates to the NOASH waivers/temporary exemption as meeting the BACM requirement for the solid fuel burning source category (*i.e.,* Alaska State regulations 18 AAC 50.075 (e)(3), (f)(2)) for the control of $PM_{2.5}$ and $SO_2$ emissions.

Alaska identified and evaluated as BACM the heating device performance standards adopted previously by Missoula County, Montana.[52] Alaska adopted a regulation modeled after the rule in Missoula County. Under 18 AAC 50.077(c), Alaska's regulations require that woodstoves meet emissions standards that are more stringent than the EPA's New Source Performance Standards (NSPS) requirement and also include 1-hour testing requirements to ensure only the lowest-emitting woodstoves are allowed to be sold and installed in the nonattainment area. We proposed to find that Alaska adopted measures sufficient to meet the BACM requirement for the solid fuel burning source category (*i.e.,* 18 AAC 50.077 (a–j) for $PM_{2.5}$ and $SO_2$ emissions.

Alaska's regulation 18 AAC 50.075(f), applicable to the Fairbanks $PM_{2.5}$ Nonattainment Area, prohibits the operation of a solid fuel-fired heating device emissions when visible emissions exceed 20 percent opacity for more than six minutes in any one hour, except during the first 15 minutes after initial firing of the device, when the opacity limit must be less than 50 percent. The rule also prohibits operation of the device such that visible emissions cross property lines. These opacity limits provide a visual indicator for the proper operation of a solid fuel heating device (for a discussion of the EPA's SSM policy, see the Proposal). The EPA proposed to approve this measure as BACM for this source category.[53]

The EPA proposed to approve and incorporate by reference Alaska's rule 18 AAC 50.075(f) as BACM because it is a permanent and enforceable measure that contributes to attainment of the 2006 $PM_{2.5}$ 24-hour NAAQS. This provision includes limits on emissions that apply during all modes of source operation and impose continuous emission controls on solid fuel heating devices consistent with the requirements of the CAA applicable to SIP provisions. In addition, the provision supports progress toward attainment of the 2006 $PM_{2.5}$ NAAQS in the Fairbanks $PM_{2.5}$ Nonattainment Area.

The EPA also proposed to find that the State's additional removal or render inoperable restrictions placed on non-certified EPA woodstoves, non-pellet outdoor hydronic heaters, coal-fired heating devices, and EPA-certified woodstoves greater than 25 years old meet BACM requirements for $PM_{2.5}$ and $SO_2$ emissions. Owners of these devices will need to remove or render them inoperable by December 31, 2024, or if a building or residence with such a device is sold prior to that date (or if a woodfired heating device is 25 years old prior to that date).[54] The EPA proposed to find that the other solid fuel burning regulations adopted by Alaska,

[49] Alaska state regulations 18 AAC 50.075 (e)(3), (f)(2); 18 AAC 50.076 (d)–(e), (g), (j)–(l); 18 AAC 50.077(a)–(m); 18 AAC 50.078(b); 18 AAC 50.079(f).

[50] Note that the EPA inadvertently indicated that it proposed to disapprove the Fairbanks Serious Plan and Fairbanks 189(d) Plan as not meeting BACT requirements for $NH_3$ in Section V of the Proposal. This was in error. The EPA made clear in the preamble to the Proposal that it was proposing to approve Alaska's determinations that no $NH_3$ controls existed for each of the stationary sources listed.

[51] State Air Quality Control Plan, Vol. II, Chapter III.D.7.12. This portion of Alaska's SIP is distinct from the Alaska's emergency powers under Alaska Statutes 46.03.820 and 18 AAC 50.245–50.246 that authorize ADEC to declare an air alert, air warning, or air advisory to notify the public and prescribe and publicize curtailment action. In prior actions, the EPA has determined that these authorities are consistent with CAA section 110(a)(2)(G) and 40 CFR 51.150 through 51.153. See 83 FR 60769, November 27, 2018, at p. 60772.

[52] Missoula City-County Air Pollution Control Program, Rule 9.203(1)(a), available at: *https://www.missoulacounty.us/government/health/health-department/administration/regulations-ordinances/air-pollution-control-program.*

[53] The regulation at 18 AAC 50.075(f)(2) specifies 40 CFR part 60, Appendix A, Method 22 as the monitoring method for determining compliance with the visible emissions standard in 18 AAC 50.075(f)(1). One of the purposes of Method 22 is to determine through visual observation the presence of smoke from a combustion source. 40 CFR part 60, Appendix A–7 Method 22 at Section 1.0. Thus, Method 22 is the appropriate monitoring method to ensure compliance with this standard. The regulation does not prescribe mandatory recordkeeping and reporting obligations. However, the EPA has determined that this standard is enforceable as a practicable matter without mandatory recordkeeping and reporting. The standard applies to a multitude of area and point sources, most of which are owned by individuals. Importantly, Method 22 observations can be made without special training—thus enabling the owner and operator of the source, Alaska, the EPA, and members of the public to readily determine and enforce compliance without the need for recordkeeping and reporting. See 40 CFR part 60, Appendix A–7 Method 22 at Section 2.3.

[54] State Air Quality Control Plan, 18 AAC 50.077 (l)–(m).

including device registration under 18 AAC 50.077(h) and dry wood requirements for wood sellers 18 AAC 50.076 represent BACM for $PM_{2.5}$ and $SO_2$ emissions for the solid fuel burning source category. These include Alaska State regulations 18 AAC 50.076 (d–e), (g), (j–l).

The EPA proposed to disapprove revisions to 18 AAC 50.076(k) as lacking sufficient monitoring to be enforceable as a practical matter and thus meet BACM and BACT requirements. Likewise, the EPA proposed to disapprove the regulations at 18 AAC 50.079(d), (e), and (f) that impose a removal requirement on owners of coal-fired heating devices. The EPA proposed to disapprove these regulations because 18 AAC 50.079(d) allows the owners to test out of the mandatory removal requirements, 18 AAC 50.079(e) includes an unbounded waiver provision, and 18 AAC 50.079(f) does not specify a process to confirm the device was rendered inoperable.[55]

The regulations at 18 AAC 50.076(d)–(e) are registration requirements for wood sellers, and thus are part of Alaska's overall strategy with monitoring and recording compliance with the dry wood requirements of 18 AAC 50.076. Alaska ensures compliance with 18 AAC 50.076(g) through moisture testing and documentation requirements. The regulation at 18 AAC 50.076(*l*) prohibits non-commercial wood sellers from selling wet wood in the Fairbanks $PM_{2.5}$ Nonattainment Area. Compliance with this prohibition is monitored and enforced through the registration requirements in 18 AAC 50.076(d)–(e).

Collectively, the EPA proposed to find that Alaska met the BACM and BACT requirements for the solid fuel burning source category for $PM_{2.5}$ and $SO_2$ emissions. However, the proposed approval excluded the dry wood requirements for wood sellers in 18 AAC 50.076(k) and coal-fired heating devices in 18 AAC 50.079(d), (e), and (f), due to the lack of practical enforceability of the dry wood requirement and the unbounded exemptions for the coal-fired heating devices noted in section II.E.3.i.a of this preamble. The EPA also proposed to approve Alaska's analysis that found no $NH_3$-specific emission controls for this source category.

[55] Alaska ensures compliance with the installation and conveyance restrictions and removal requirements via the registration requirements in 18 AAC 50.077(h). The regulations mandate certain recordkeeping and reporting obligations to ensure the practical enforceability of the requirements and restrictions in 18 AAC 50.077.

b. Final Rule

The EPA is finalizing partial approval of the solid fuel device heating requirements as BACM. The EPA is finalizing partial disapproval of Alaska's measures regarding dry wood seller requirements and coal-fired heating devices. The EPA recommends Alaska revise 18 AAC 50.076(k)(3) to require a specific frequency wood sellers are required to measure the moisture content of the seller's wood stock. Likewise, the EPA also recommends Alaska revise the regulations at 18 AAC 50.079(d), (e) and (f) to remove (or revise to BACM and BACT-level stringency) the testing exemption in (d), remove or properly bound the waiver provision in (e), and add requirements to verify compliance with the requirement for the owner and operator to render the device inoperative. Once Alaska submits a SIP revision resolving the identified deficiencies, the EPA will evaluate whether the updated rules meet BACM requirements.

c. Comments and Responses

*Comment:* Several commenters opposed the EPA's approval of the State's control measures on solid fuel burning devices, specifically wood-fired heating devices as meeting BACM requirements for this source category. Specifically, several commenters expressed general concern over restrictions on the sale and use of wood stoves. Other commenters stated that the measures should include exemptions for the elderly, people with financial difficulty, and people who only live in the nonattainment area in the summer.

*Response:* Alaska adopted several restrictions and requirements for the sale, distribution, and operation of solid fuel burning devices in the Fairbanks Serious Plan and Fairbanks 189(d) Plan. Specifically, the State has determined that it is appropriate to include restrictions on the installation, reinstallation, sale, leasing, distribution, and conveyance of solid fuel burning devices.[56] Among other requirements for this source category, the State has specified that only stoves that meet certain emission standards may be sold, conveyed, or installed in the nonattainment area.[57]

In addition, Alaska adopted a regulation that requires a person who owns a woodstove or pellet stove that does not have a valid certification from the EPA under 40 CFR 60.533 or a non-pellet fueled wood-fired outdoor hydronic heater shall render the device inoperable before December 31, 2024; or before the device is sold, leased, or conveyed as part of an existing structure, whichever is earlier.[58]

The EPA's position is that these, as well as other, measures are necessary to control direct $PM_{2.5}$ emissions and $SO_2$ emissions from the solid fuel heating device source category. Alaska adopted these controls after determining that they are technologically and economically feasible. As explained in the Proposal and of this preamble, the EPA agrees with the State's determination that these restrictions are appropriate and meet BACM requirements for this source category.

These measures are a critical component of Alaska's overall strategy to phase out older, more polluting wood stoves for liquid or gas fired heating devices, or newer, cleaner-burning stoves. Adoption of these controls was necessary to satisfy the BACM and BACT requirements of the CAA and the overall requirement to achieve attainment as expeditiously as practicable.

*Comment:* One commenter opposed the dry wood requirements as being too costly.

*Response:* The EPA disagrees with the commenter that the dry wood requirement is too costly or otherwise economically infeasible. Alaska adopted a measure to mandate that users of wood-fired heating devices only burn dry wood.[59] Alaska also imposed requirements on commercial wood sellers to ensure that they sell dry wood in the Fairbanks $PM_{2.5}$ Nonattainment Area.[60] Alaska determined that these measures were technologically and economically feasible. The EPA concurs with this assessment. Absent a determination and supporting documentation that these measures are infeasible, neither Alaska nor the EPA have a basis to not adopt and implement these measures as necessary components of the control strategy required by the CAA.

*Comment:* Several comments opposed the EPA's approval of the control measures for solid fuel burning devices, arguing that Alaska should instead ban all wood stoves in the nonattainment area.

*Response:* As part of development of the Fairbanks Serious Plan, Alaska specifically assessed the feasibility of banning woodstoves all together[61] and the feasibility of banning woodstoves in

[56] 18 AAC 50.077(a)–(f).

[57] *Id.*

[58] 18 AAC 50.077(*l*).

[59] 18 AAC 50.076.

[60] 18 AAC 50.076(g).

[61] ADEC also reviewed this measure as part of development of the Moderate Area Plan.

new construction.[62] In both cases Alaska determined these bans were not technologically or economically feasible. The EPA reviewed these determinations and concurs with Alaska's determinations. The EPA agrees with Alaska's determination that residents require the option of heating their homes with wood—thus both bans are technologically infeasible at this time. There are many residents whose only source of heat in the winter is wood. Alaska and several commenters pointed out that the area experiences power outages in the winter that necessitate use of a space heating device that does not need electricity to operate. While natural gas is available in the nonattainment area, and access has increased in recent years, it remains significantly limited across the nonattainment area.

The EPA notes that, in lieu of woodstove bans, Alaska adopted a suite of controls on solid fuel burning devices, including the woodstove curtailment program.[63] Under the curtailment program, Alaska issues burn bans based on forecasted concentrations of $PM_{2.5}$. Once Alaska issues a burn ban, wood stove operators must withhold fuel from wood stove devices (other than exempt devices) and ensure that combustion has ceased within three hours of the effective time of the declaration.[64]

*Comment:* One commenter opposed the EPA's approval of the woodstove curtailment program as meeting BACM requirements. The comment asserted that the program cannot meet BACM requirements because Alaska does not adequately enforce the program. According to the commenter, Alaska estimated the compliance rate for the program in 2019 was 30 percent and will achieve 45 percent by 2024. The commenter also stated that meaningful enforcement could be accomplished by granting the Alaska Department of Environmental Conservation citation authority. The commenter also argued that Alaska's current ''three-strikes'' approach to enforcement is ineffective and does not deter noncompliance. Finally, the commenter argued that the EPA should not approve the woodstove curtailment program as meeting BACM requirements without further assurances from the State that it will practice meaningful enforcement.

*Response:* The EPA disagrees with the commenter that the woodstove curtailment program, as adopted via 18 AAC 50.075(e) and the Fairbanks Emergency Episode Plan, does not meet the requirements for BACM for the solid fuel burning emission source category. Consistent with 40 CFR 51.1010(a)(2), the State identified the curtailment program and corresponding curtailment thresholds through surveying other NAAQS nonattainment areas. In reflection of lower curtailment thresholds adopted in other jurisdictions, the State lowered the curtailment thresholds—making the measure more stringent than the measure submitted as part of the Fairbanks $PM_{2.5}$ Moderate area plan (Fairbanks Moderate Plan) to meet RACM requirements.[65] Thus, the woodstove curtailment program meets the requirements as BACM for the wood-fired heating device emission source category. Since adoption, Alaska has employed a model to forecast days with high $PM_{2.5}$ concentrations, regularly issued Stage 1 and Stage 2 alerts, monitored compliance, and issued notices of noncompliance.[66] Alaska issues compliance letters, advisory letters, and Notice of Violation letters each year. During the 2021–22 winter season, Alaska sent 136 compliance or advisory letters.[67] Thus, Alaska is implementing the measure.

With respect to compliance, the EPA understands the commenter's concern that there is insufficient compliance and that compliance can affect the effectiveness of a control measure. Alaska is likewise aware of issues regarding compliance, and has taken steps to try to assure better compliance. When assessing whether a specific control measure meets BACM requirements, however, the EPA is evaluating whether the measure as formulated meets applicable stringency requirements and other requirements for SIP provisions, including that the measure is legally and practically enforceable. A lack of total compliance (actual or projected) does not necessarily disqualify a measure as BACM. Concerns about compliance rates with the requirement are reflected in other ways, such as in the amount of SIP emissions reduction credit the State claims and the EPA provides for a given measure (*e.g.,* a measure with 50 percent compliance receives 50 percent credit towards other requirements such as the attainment projected emissions inventory, RFP, QMs, and the modeled attainment demonstration). In addition, consistent with CAA section 110(a)(2)(C), States are required to have a program to enforce SIP requirements. Similarly, the EPA determined that the State met the requirements for CAA section 110(a)(2)(E) with respect to adequacy of State legal authority, personnel, and resources need to implement the SIP. The EPA determined that Alaska satisfied these requirements in its latest approval of the State's $PM_{2.5}$ infrastructure SIP submission.[68] We note that a State's failure to implement a control measure could be the basis for a finding under CAA section 179 and that is likely the more appropriate authority to address any failure to enforce SIP measures. The EPA has made no such finding for Alaska, generally, nor the Fairbanks $PM_{2.5}$ Nonattainment Area, specifically.

*Comment:* One commenter questioned why use of electrostatic precipitators (ESPs) is not part of the control strategy.

*Response:* Alaska and the Fairbanks North Star Borough (FNSB) reviewed a requirement to install ESPs on woodstoves as part of its BACM analysis in the Fairbanks Serious Plan.[69] In the Fairbanks Serious Plan, the State also included a summary of current ESP requirements and the FSNB's research and assessment of the feasibility of using ESPs.[70] Ultimately, Alaska determined that requiring installation of ESPs was technologically infeasible. In addition, Alaska raised concerns that exempting persons who install ESPs from having to comply with the curtailment program would be less stringent than the current requirements.

The EPA proposed to approve Alaska's determination that requiring ESPs is not technologically feasible. The EPA is finalizing this approval as proposed. Alaska's feasibility assessment identified several technological challenges to

[62] *See* State Air Quality Control Plan, Vol. III, Appendix III.D.7.7–62.

[63] 18 AAC 50.075(e); 18 AAC 50.030(a); State Air Quality Control Plan Vol. II, Chapter III.D.7.12.

[64] 18 AAC 50.075(e)(3).

[65] 82 FR 42457, September 8, 2017.

[66] *See* Alaska Department of Environmental Conservation (ADEC) Curtailment and Alerts in the Fairbanks North Star Borough Nonattainment Area, available at *https://dec.alaska.gov/air/anpms/communities/fbks-pm2-5-curtail-alert/. See also,* State Air Quality Control Plan Vol. II, Chapter III.D.7.12 Fairbanks Emergency Episode Plan. *See, e.g.,* Alaska Department of Environmental Conservation, Division of Air Quality, FNSB Air Quality Stage 2 Alert, March 1, 2019 (included in Docket).

[67] 2nd Annual Report, Air Quality Control Program Implementation Status, Fairbanks North Star Borough $PM_{2.5}$ Nonattainment Area, Alaska Department of Environmental Conservation and Fairbanks North Star Borough, available at: *https://dec.alaska.gov/air/anpms/communities/progress-annual-reports/.*

[68] Air Plan Approval; AK: Fine Particulate Matter Infrastructure Requirements, 83 FR 60769, November 27, 2018, at p. 60771.

[69] State Air Quality Control Plan, Volume III, Appendix III.D.7.07, at pp. 109–110, Adopted November 19, 2019.

[70] State Air Quality Control Plan, Volume II, Chapter III.D.7.07 at pp. 101–103, adopted November 19, 2019.

implementing the measure, including lack of professional installers, lack of standard performance certification methods, frequent system degradation, and frequent maintenance requirements from trained professionals.[71] The comment does not provide information to call Alaska's assessment into question. Alaska and the FNSB may continue to research the feasibility and efficacy of ESPs and potentially incorporate a requirement to install and operate ESPs into a future plan. Any future SIP revisions, however, must be consistent with CAA section 110(*l*).

*Comment:* One commenter requested that the EPA not approve the requirement to destroy woodstoves. The commenter asserted that backup heating sources are necessary. The commenter requested that the SIP allow change-outs without the need to destroy the existing woodstove.

*Response:* The EPA disagrees with these comments. First, in this action the EPA is evaluating the specific suite of control measures that the State identified, adopted, and submitted to the EPA to meet the BACM requirement for this source category. The EPA does not have the authority under the CAA to modify a SIP submission unilaterally or to disapprove a SIP provision in whole or in part on the basis of it being too stringent.[72] Second, the requirements that older, uncertified devices be rendered inoperable are an important component of Alaska's control strategy in the Fairbanks Serious Plan and Fairbanks 189(d) Plan.[73] Alaska's SIP requires, in pertinent part, that a person who owns a device that may not be reinstalled within the area to ensure the device is rendered inoperable when it is removed. The EPA agrees that this approach is technologically and economically feasible and is appropriate to assure that necessary emission reductions from this source category actually occur.

Alaska has also identified, adopted, and submitted provisions that requires an owner of a woodstove or pellet stove that does not have a valid certification from the EPA or a non-pellet fueled wood-fired hydronic heater to render the device inoperable before December 1, 2024, or before the device is sold, leased, conveyed as part of an existing structure, whichever is earlier. In each instance, the State has determined that the requirement to render the device inoperable is important to ensuring the emissions reductions are permanent and that older, uncertified devices are not reinstalled in a home or business. Again, the EPA agrees that this approach is technologically and economically feasible and is appropriate to assure that necessary emission reductions from this source category actually occur.

In addition, the FNSB operates a Wood Stove Change Out Program using EPA Targeted Airshed Grant funding.[74] A requirement to receive reimbursement for the new stove or furnace is to turn in the old device for recycling and to submit a Deed Restriction that restricts future installations of wood, pellet, and coal burning appliances on the property.[75] The conditions are important components to ensuring the integrity of the Wood Stove Change Out Program and the permanence of emissions reductions.

*Comment:* Several commenters suggested additional controls for the solid fuel heating device source sector including utilizing temperature sensors on woodstove flues to ensure compliance with the curtailment program and switching energy generation from fossil fuels to solar, hydro, and nuclear.

*Response:* The EPA understands the perspective of the commenters, but the commenters do not provide any specific support or explanation for why the additional measures they advocate are technologically or economically feasible as BACM measures in the Fairbanks $PM_{2.5}$ Nonattainment Area. In this action, the EPA is evaluating whether the control measures that the State has identified, adopted and submitted constitute BACM for this source category. Alaska conducted a review of available controls for the solid fuel heating device source category and did not identify temperature sensors or converting to renewable energy generation as potential control measures in the nonattainment area. Alaska's BACM identification and evaluation process for the solid fuel burning source category meets CAA requirements. Based on the analysis in the Fairbanks Serious Plan and the Fairbanks 189(d) Plan, the EPA has concluded that the existing measures do meet BACM and does not agree that the additional control strategies that the commenter suggest are required at this time.

To the extent that more measures may be required for attainment and maintenance of the NAAQS in this area in the future, the commenters may wish to continue to advocate for them in future SIP development processes. In addition, consistent with CAA section 116, Alaska has authority to adopt measures that are more stringent than required under the CAA, within certain limitations, and may elect to do so.

ii. Residential and Commercial Fuel Oil Combustion

a. Summary of Proposal

In order to satisfy the $SO_2$ BACM and BACT requirements for the residential and commercial fuel oil combustion source category, Alaska adopted the regulation at 18 AAC 50.078(b) that imposes a limit of 1,000 parts per million sulfur (diesel #1) for residential and commercial heating. This is a switch from the currently available diesel #2 (approximately 2,000 parts per million sulfur) to diesel #1. However, as part of its BACM analysis, Alaska identified 10 other States and large municipal areas that have instituted ULSD home heating requirements and found this measure to be technologically feasible and economically feasible at a cost of $1,819 per ton $SO_2$ removed ($SO_2$ is a significant precursor in the Fairbanks nonattainment area). Alaska provided a number of community-based considerations were Fairbanks to undergo the switch from diesel #2 to ULSD. These considerations included potential collateral environmental impacts caused by greater fuel transportation requirements required to maintain an adequate ULSD supply in the Fairbanks $PM_{2.5}$ Nonattainment Area through the winter months.

The EPA noted that a State must adopt and implement an identified BACM unless the State demonstrates the potential measure is either technologically or economically infeasible. Alaska identified the ULSD requirement as BACM for this source category and its own analysis indicates this requirement is feasible. While the EPA acknowledged in the Proposal that implementing a fuel switch from #2 to ULSD may be challenging, The EPA also stated that the challenges identified by Alaska in the Fairbanks Serious $PM_{2.5}$ and the Fairbanks Section 189(d) Plan were insufficient to support an infeasibility demonstration. The EPA stated in the Proposal that this is particularly so when many jurisdictions have successfully required ULSD as a control measure. The EPA also noted in

[71] State Air Quality Control Plan Vol. III, Appendix III.D.7.7 at pp. 134–135.

[72] See CAA sections 110(k) and 116, 42 U.S.C. 7410(k) and 7416; see also *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 256–257 (1976).

[73] See 18 AAC 50.077(*l*)–(m); 18 AAC 50.079(f).

[74] For information on the EPA's Targeted Airshed Program, see: *https://www.epa.gov/air-quality-implementation-plans/targeted-airshed-grants-program.*

[75] Voluntary Solid Fuel Burning Appliance Change Out Program Application, available at *https://www.fnsb.gov/DocumentCenter/View/811/WoodPelletCoal-Appliance-Change-Out-Program-Application-PDF.*

the Proposal that reducing $SO_2$ emissions from this source category is particularly important to achieving expeditious attainment because conversions to liquid-fueled heating devices constitute the vast majority of activity in the woodstove changeout program. Thus, we proposed to disapprove Alaska's determination that the less stringent control measure imposing only the requirement to use diesel #1 under 18 AAC 50.078(b) meets BACM requirements for $PM_{2.5}$ and $SO_2$ emissions. However, we proposed to approve Alaska's analysis that found no $NH_3$-specific emission controls for this source category.

b. Final Rule

Based on comments received, the EPA is finalizing approval of portions of the Fairbanks Serious Plan and Fairbanks 189(d) Plan, pertaining to the regulation at 18 AAC 50.078(b), as meeting the $SO_2$ BACM and BACT requirements for the residential and commercial fuel oil combustion source category. The EPA received significant comments, including a revised economic feasibility analysis from Alaska, that demonstrate that requiring ULSD for this source category is not economically feasible at this time. However, as discussed in detail in, Section II.D.7 of this preamble, this measure appears to be feasible as a contingency measure that, if adopted, could partially rectify deficiencies in the contingency measures submitted as part of the Fairbanks Serious Plan and Fairbanks 189(d) Plan.

c. Comments and Responses

The EPA summarizes major comments and responses below. For a detailed summary of relevant comments and the EPA's responses on this requirement, see the Response to Comments document included in the docket for this action.[76]

*Comment:* Several commenters questioned the technological feasibility of mandating ULSD use for the residential and commercial fuel oil combustion source category. These commenters argued that supplying sufficient ULSD to interior Alaska was not logistically feasible considering constrained rail and highway capacity.

*Response:* The EPA disagrees that requiring the use of ULSD for the residential and commercial fuel oil combustion source category is technologically infeasible. In the Fairbanks Serious Plan and Fairbanks 189(d), Alaska evaluated the logistical challenges but at that time Alaska concluded that this measure was technologically feasible.[77] While Alaska updated this information, we do not find that the updated information is sufficient to determine that the States' initial technological evaluation was flawed.

There are already sources in the Fairbanks $PM_{2.5}$ Nonattainment Area that are currently using ULSD fuel, so it is self-evident that it is technologically and logistically feasible for some amount of this fuel to be available today. Based on the comments, there appear to be options available to minimize wintertime logistical and supply issues. To address supply concerns, Alaska did evaluate the potential for building local storage. Commenters have asserted that refining ULSD locally has economic challenges, but we have not received any economic data to support this assertion.

*Comment:* As part of its comments, Alaska submitted a revised economic feasibility assessment for mandating ULSD for this source category. In total, Alaska made eight distinct revisions to the cost-effectiveness analysis that Alaska submitted for ULSD with the Fairbanks 189(d) Plan. For example, Alaska updated the fuel use impacts from switching from 2,000ppm sulfur fuel to ULSD and changes in price premium for ULSD. Considering a number of scenarios in Alaska's updated analysis, Alaska revised its BACM determination to state that ULSD cost-effectiveness was calculated to range from $58,252 per $SO_2$ ton removed under low baseline oil market prices to $73,816 per $SO_2$ ton removed under high baseline oil market price conditions that currently exist in early 2023.

*Response:* The EPA evaluated Alaska's methodology for producing its cost effectiveness calculation submitted as part of its comments. The EPA agrees with some of Alaska's methods and variables and disagrees with others. The EPA produced a separate cost effectiveness calculation that builds off Alaska's comment, but incorporates only those methods and variables that the EPA determined are reasonable and well supported. The EPA's cost effectiveness calculation is located in the docket for this action.[78]

Overall, the EPA's updated cost effectiveness analysis leads to an overall cost ranging from $13,046 and $22,893 per $SO_2$ ton removed. The lower-end of the range reflects incorporation of Alaska's estimate of individuals substituting fuel use for wood use—thus reducing overall ULSD expenses—in reaction to the price increase associated with using ULSD. The upper-end of the range does not incorporate this estimate. Given the variability in fuel prices and speculative basis for estimating residents' economic behavior given the ULSD mandate, the EPA believes that the upper-end of the estimate reflects more accurate and conservative assumptions about the cost effectiveness of mandating ULSD.

iii. Small Commercial Area Sources

a. Summary of Proposal

Alaska identified BACM and BACT requirements for small area source categories as part of the Fairbanks Serious Plan and then updated those findings as part of the Fairbanks 189(d) Plan.

Alaska adopted a control measure for coffee roasters at 18 AAC 50.078(d) that required installation of an emissions control device unless the coffee roaster can demonstrate technological or economical infeasibility. In the Proposal, the EPA stated that, as written, the State rule purporting to implement this measure does not appear to be enforceable as a practical matter. The rule does not require use of emissions controls once installed, specify any emission limits, nor monitoring requirements with which the subject sources must comply. In addition, the rule contains a waiver provision based on the facility providing information demonstrating that the control technology is technologically or economically infeasible. This provision is not adequately specific or bounded and, thus, may bar effective enforcement (see 81 FR 58010, August 24, 2016, at p. 58047). In addition, the State must adopt permanent and enforceable control measures for this source category even if certain sources within the source category have existing emissions controls. Therefore, the EPA proposed to disapprove Alaska's determination that 18 AAC 50.078(d) satisfies BACM for coffee roasters.

Alaska required commercial charbroilers to submit information to Alaska related to the type, operation, and performance of the device as part of

[76] Response to Comments Regarding Best Available Control Measure Requirements for Residential and Commercial Fuel Oil Combustion on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan EPA–R10–OAR–2022–0115.

[77] State Air Quality Control Plan, Vol. III, Appendix III.7.7–5396, adopted November 18, 2020.

[78] See the EPA FR Technical Support Document—ULSD residential and commercial fuel oil combustion, included in the docket for this action.

the Fairbanks Serious Plan.[79] Based on the information provided, Alaska then conducted an economic analysis as part of the Fairbanks 189(d) Plan that assessed the cost of installing an available control measure, catalytic oxidizers, on each of the charbroilers in the nonattainment area. The State estimated the cost of installing catalytic oxidizers at $47,786 per ton of $PM_{2.5}$ removed (adjusted to 2019 dollars). Thus, Alaska ultimately determined that BACM is economically infeasible for this source.

While the EPA found that Alaska's economic analysis is a reasonable estimate of the cost of installing one potential emission control device, Alaska did not evaluate all available control measures. Currently available emission control devices include electrostatic precipitators (ESP), wet scrubbers, and filtration.[80] Moreover, Alaska did not explain whether there are chain-driven or underfire charbroilers in the Fairbanks Nonattainment Area, which have different considerations for emission controls.[81] Therefore, the EPA proposed to disapprove Alaska's evaluation of, and BACM determination for, charbroilers.

Alaska identified and evaluated the prohibition of used oil burners as a potential BACM-level control measure. Alaska issued a regulation at 18 AAC 50.078(c) requiring owners and operators of used oil burners to provide certain information to assist Alaska in evaluating the feasibility of imposing the prohibition. Ultimately, Alaska did not adopt and submit any controls on used oil burners as part of the Fairbanks Serious Plan or Fairbanks 189(d) Plan.

Alaska updated the BACM analysis in the Fairbanks 189(d) Plan to address environmental impacts if used oil burning were restricted in the Fairbanks $PM_{2.5}$ Nonattainment Area. According to the State, the only way to dispose of used oil in the nonattainment area is through burning and that limiting this disposal method would likely lead to dumping the used oil on land or water. While one factor the State may consider in demonstrating the technological infeasibility of a measure is collateral environmental impacts, the EPA stated in the Proposal that Alaska's evaluation is insufficient to demonstrate that prohibiting used oil burners is technologically infeasible. Notably, illegal dumping of used oil is prohibited under State and Federal laws.[82] Thus, the State and the EPA have a basis for preventing or mitigating any environmental impacts that may result from prohibiting used oil burning. The EPA indicated that requiring used oil generators to collect and ship used oil to a central disposal facility appears feasible. Because Alaska imposed no controls on this source category and did not adequately demonstrate that BACM for this emission source is technologically or economically infeasible, we proposed to disapprove Alaska's BACM evaluation and determination for use oil burners.

Similarly, incinerators are another source category subject to the information requirements under 18 AAC 50.078(c). However, after receiving information related to this source category, Alaska determined that there are no emission sources identified as incinerators in the Fairbanks nonattainment area and thus, evaluation of emissions controls is not necessary. We proposed to find that Alaska reasonably determined that there were no affected sources for this source category, therefore Alaska did not need to identify, adopt, or implement BACM and BACT for this source category in the Fairbanks $PM_{2.5}$ Nonattainment Area.

Overall, for small commercial area sources, we proposed to approve Alaska's BACM determination for incinerators (18 AAC 50.078(c)(2)). We proposed to disapprove Alaska's BACM determination for coffee roasters, charbroilers, and used oil burners for the reasons stated above (18 AAC 50.078(c)(1); 18 AAC 50.078(c)(3); 18 AAC 50.078(d)).

b. Final Rule

The EPA is finalizing approval of Alaska's BACM determination for incinerators. Based on comments received, the EPA is also finalizing approval of Alaska's BACM determination for charbroilers and used oil burners. By extension, the EPA is approving 18 AAC 50.055 as $PM_{2.5}$ BACM and BACT for the chairbroiler source category. The EPA is finalizing disapproval of Alaska's BACM determination for coffee roasters.

c. Comments and Responses

*Comment:* Several commenters generally opposed the EPA's proposed disapproval of Alaska's determinations with respect to small commercial areas sources on various grounds, including that these sources are insignificant contributors to pollution; focusing staff resources on evaluating controls on these sources diverts attention to addressing major contributors, such as woodstoves; and review of these sources would not be necessary if the EPA better administered the wood heater NSPS.

*Response:* The EPA disagrees with these comments. First, under the CAA and $PM_{2.5}$ SIP Requirements Rule, BACM and BACT are required for all sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors. In the $PM_{2.5}$ SIP Requirements Rule, the EPA expressly determined that given the nature of $PM_{2.5}$ that typically results from the combined emissions of many sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors that in the aggregate contribute to nonattainment, there should be no de minimis source category exemption.[83] Thus, even accepting the commenter's assertion that these small commercial areas sources are insignificant contributors to the overall nonattainment problem in Fairbanks, that would not be a valid basis for not identifying, adopting, and implementing BACM and BACT on these sources.

Second, the EPA acknowledges that evaluating potential controls on these sources takes time and requires staff and/or contractor resources. For this reason, the EPA engaged with ADEC early in the SIP development process for the Fairbanks Serious Plan and Fairbanks 189(d) Plan to provide guidance on these requirements so that ADEC would have the maximum amount of time to fulfill its obligations. The EPA disagrees, though, that evaluating controls, adopting regulations, and implementing and enforcing those regulations are mutually exclusive. The CAA requires that States with a $PM_{2.5}$ nonattainment area to identify, adopt, and implement BACM and BACT. Moreover, the CAA requires that the State provide necessary assurances that, inter alia, it has adequate personnel, funding, and authority to carry out the SIP. Thus, Alaska was aware of the extent of its analytical, rulemaking, and enforcement obligations and ought to retain sufficient personnel to carry out those obligations.

[79] 18 AAC 50.078(c).

[80] *See* Gysel, et al. (2018). Particulate matter emissions and gaseous air toxic pollutants from commercial meat cooking operations. *Journal of Environmental Sciences,* 65, 162–170; Yang, et al. (2021). Transient plasma-enhanced remediation of nanoscale particulate matter in restaurant smoke emissions via electrostatic precipitation. *Particuology* 55, 43–47; New York City Department of Environmental Protection (February 2021). Certified Emission Control Devices for Commercial Under-Fired Char Broilers. Available at *https://www1.nyc.gov/assets/dep/downloads/pdf/air/approved-under-fired-technology.pdf;* Francis & R.E. Lipinski (2012). Control of Air Pollution from Restaurant Charbroilers. *Journal of the Air Pollution Control Association,* 27:7, 643–647, available at: *https://doi.org/10.1080/00022470.1977.10470466.*

[81] Yang, et al. (2021). Transient plasma-enhanced remediation of nanoscale particulate matter in restaurant smoke emissions via electrostatic precipitation. *Particuology,* 55, pages 43–47.

[82] 18 AAC 60.020; 33 U.S.C. 1321; 40 CFR 279.12.

[83] 81 FR 58010, August 24, 2016, at p. 58082.

To the extent Alaska is reflecting on the burden of satisfying its obligations in the context of comments submit of this rulemaking, the EPA reiterates that it apprised Alaska of these obligations long before the instant action. Moreover, the EPA repeated the CAA BACM and BACT requirements in two comment letters submitted as part of the State's public comment processes for the Fairbanks Serious Plan and Fairbanks 189(d) Plan.[84]

Third, the EPA disagrees with the commenters' assertion that evaluating and imposing controls on small commercial area sources would not be necessary if the EPA better implemented the wood heater NSPS. The CAA and $PM_{2.5}$ SIP Requirements Rule required Alaska to implement BACM and BACT regardless of whether the EPA issued any NSPS for wood heaters. Moreover, BACM and BACT is generally independent of attainment needs. Thus, implementation of the NSPS does not alter Alaska's BACM and BACT obligations under the CAA.

*Comment:* Alaska asserted that, based on monitoring data, Alaska's control strategy has made significant progress towards attainment.

Additionally, some commenters referenced the improvement in air quality based on measured concentrations at the monitors in the Fairbanks $PM_{2.5}$ Nonattainment Area. Commenters specifically noted that concentrations have been cut in half generally and are below the NAAQS at the ''downtown'' monitor. There are three regulatory monitors currently operating in the Fairbanks $PM_{2.5}$ Nonattainment Area: Hurst Road, A Street, and NCore. The Hurst Road monitor, located in North Pole, has historically measured the highest concentrations of $PM_{2.5}$. The EPA acknowledges that measured concentrations of $PM_{2.5}$ at the Hurst Road Monitor have declined from 158 $\mu g/m^3$ in 2012 to 72 $\mu g/m^3$ based on 2019–2021 data.

*Response:* The EPA disagrees with the comment that the ''downtown'' monitor is measuring attainment of the NAAQS. The most recent monitor data at the NCore monitoring station, arguably the closest air quality monitor to the City of Fairbanks' downtown area, indicate concentrations of 43 $\mu g/m^3$. The A Street monitor, located in a portion of Fairbanks of expected maximum $PM_{2.5}$ concentrations, has not yet established an official 3-year Design Value to compare to the NAAQS. More importantly, however, all regulatory monitors in a nonattainment area must have three-year design values at or below the standard for the EPA to issue a Clean Data Determination or redesignate the area to attainment.[85] In addition, neither the A Street nor NCore monitoring stations have a complete three-year design value below the NAAQS. Finally, the EPA notes that Alaska established the A Street monitor location as a SLAMS $PM_{2.5}$ monitoring station to characterize expected maximum concentrations in the Fairbanks portion of the Fairbanks $PM_{2.5}$ Nonattainment Area. Thus, the A Street monitoring station, rather than the NCore monitoring station is more representative of expected maximum concentrations in the Fairbanks portion of the nonattainment area. Finally, the EPA notes that an area's progress towards attainment does not affect the CAA's nonattainment planning obligations, particularly the BACM and BACT requirements. By extension, the BACM and BACT requirements are not suspended with a Clean Data Determination issued under 40 CFR 51.1015.[86] Thus, to the extent the commenters are suggesting that the control strategy in the Fairbanks Serious Plan and Fairbanks 189(d) Plan meet CAA requirements by virtue of reductions in measured air quality, EPA disagrees.

*Comment:* In its comments on the Proposal, Alaska proposed to develop a new regulation, replacing 18 AAC 50.078(d), to address the EPA's concerns and make its coffee roaster controls enforceable. Alaska plans to create a new regulation that will address the EPA's concerns and be submitted in a future SIP revision. The regulation will be structured as a 'permit-by-rule' which will contain substantive requirements that apply to coffee roasters over the 24 pounds per year emission threshold.

Alaska further noted that the coffee roasters in the Fairbanks $PM_{2.5}$ Nonattainment Area emit a very small amount of direct $PM_{2.5}$—far less than the solid fuel burning device source category. By extension, Alaska commented that spending time and resources on regulating coffee roasters diverts limited resources away from addressing the more significant sources of pollution and ultimately hinders expeditious attainment.

*Response:* The EPA proposed disapproval of Alaska BACM determination for coffee roasters because the State rule applicable to this source category, 18 AAC 50.078(d), was not enforceable as a practical matter. The EPA appreciates that Alaska indicated in its comments that the State is planning to address the identified deficiencies in this rule in a manner that meets BACM and BACT requirements and provides for basic enforceability. The EPA will evaluate the merits of the revised rule when the State submits it to the EPA as a SIP revision. The rule before the EPA remains insufficient for BACM and BACT purposes and we are finalizing the disapproval of this specific rule because it does not meet the BACM and BACT requirement.

*Comment:* In comments, Alaska revised its prior analysis of charbroilers located in the Fairbanks $PM_{2.5}$ Nonattainment Area and updated its cost analysis for emission controls. Alaska examined survey responses and queried other agencies to determine which types of charbroilers are present in the nonattainment area and found that only underfired charbroilers are present. As such, Alaska amended its analysis because it previously analyzed the cost-effectiveness of catalytic oxidizers, but that control technology is not viable for underfired charbroilers. Alaska stated that, based on the EPA's suggestion and its review of the literature and other SIPs, ADEC evaluated the feasibility of electrostatic precipitators (ESPs), wet scrubbers, and filtration as potential control technologies for underfired charbroilers.

Alaska stated that the EPA did not incorporate the visible emission limits in 18 AAC 50.055 as being part of BACT for charbroilers despite Alaska's inclusion of that regulation in its description of BACM for this emission category. Alaska further commented that the EPA must evaluate 18 AAC 50.055 as part of BACM for the underfired charbroilers in the Fairbanks $PM_{2.5}$ Nonattainment Area.

Alaska noted that, although Alaska believes this technology can be properly dismissed under Step 3 of the BACM analysis (related to technological infeasibility), Alaska also evaluated the economic feasibility of ESPs, wet

[84] ''EPA Comments on 2020 Department of Environmental Conservation (DEC) Proposed Regulations and SIP Amendments'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, October 29, 2020; ''EPA Comments on 2019 DEC Proposed Regulations and SIP—Fairbanks North Star Borough Fine Particulate Matter'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, July 19, 2019.

[85] 40 CFR 50.13(a) & (c); 40 CFR part 50, Appendix N, Section 3.0(a); 40 CFR 51.1015.

[86] 40 CFR 51.1015(b) (''Upon a determination by the EPA that a Serious $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, reasonable further progress plan, quantitative milestones and quantitative milestone reports, and contingency measures for the area shall be suspended.'').

scrubbers, and filtration as BACM for underfired charbroilers. ADEC analyzed the cost-effectiveness of these control technologies based on the most comprehensive economic analysis available, which was developed by the San Joaquin Valley Air Pollution Control District (SJVAPCD).[87] Alaska adjusted the costs for inflation and the difference in labor costs between California and Alaska, plus projected shipping costs from the continental United States to Alaska.

Alaska stated that, according to SJVAPCD, it reported combined costs for ESP and filtration technologies as a range rather than a single number due to the variables involved in the cost estimates, including equipment type, simple or complicated configuration, age of the restaurant's infrastructure, and more. Installing new controls on existing restaurants can be expensive, requiring structural, electrical, or plumbing modifications, compared to new restaurants that can integrate emission controls into the design. Based on SJVAPCD's reasoning, Alaska chose to use this same approach of presenting cost-effectiveness as a range rather than as a single number.

For the Fairbanks $PM_{2.5}$ Nonattainment Area, Alaska found the range of cost-effectiveness for installing an ESP for an underfired charbroiler to be between $41,467 and $528,940 per ton of $PM_{2.5}$ removed, based on a removal efficiency of 86 percent. Alaska found the range of cost-effectiveness of installing a filtration system for an underfired charbroiler to be between $44,577 and $568,610 per ton of $PM_{2.5}$ removed, based on a removal efficiency of 80 percent.

Alaska stated that the cost-effectiveness analysis for filtration represents wet scrubbers, because wet scrubbers require filtration. Alaska stated that a wet scrubber is essentially a fine stream of water and detergent that washes the particulates from the underfired charbroiler's exhaust, which passes through a filtration system before discharging to the sewer. Therefore, Alaska stated that the cost estimates developed for ESP and filtration systems conservatively represent the cost estimates for wet scrubbers, because wet scrubbers are an additional cost upstream of filtration systems.

Alaska stated that its review demonstrates that control measures for underfired charbroilers are technologically and economically infeasible for the Fairbanks $PM_{2.5}$ Nonattainment Area. Alaska based its prior analysis on chain-driven charbroilers and found that catalytic oxidizers were technologically but not economically feasible as BACM.[88] Updated information and further research indicated the presence of only underfired charbroilers in the nonattainment area, and the controls for underfired charbroilers are different. Alaska evaluated the technological and economic feasibility analysis for ESP, filtration systems, and wet scrubbers for underfired charbroilers and found all controls to be technologically and economically infeasible as BACM.

*Response:* In the Proposal, the EPA explained that the State had not adequately identified and evaluated potential control measures for this source category. For example, the State's analysis did not identify the types of charbroilers located in the Fairbanks $PM_{2.5}$ Nonattainment Area. Similarly, the State did not consider and evaluate different forms of control measures that exist for each of the two kinds of charbroilers. Instead, the State only identified one potential control measure for one type of source and claimed this this one form of control measure would not be economically feasible. Thus, the EPA explained that the State had not properly identified, evaluated, and adopted control measures to meet the BACM requirement for this source category.

Comments on the Proposal provided by Alaska have filled the analytical gaps. Alaska has gathered additional information to determine that all existing charbroilers in Fairbanks are underfired charbroilers. ADEC sent letters to restaurants requesting information on charbroilers at each establishment. Of all those who responded that the restaurant had a charbroiler, all stated that they were underfire charbroilers. Alaska further confirmed with the Alaska Department of Environmental Conservation's Environmental Health Division, State Fire Marshalls, and third-party inspectors that there were no chain-driven charbroilers in the area. The State also identified the range for potential control measures for this type of source, including an ESP, wet scrubber, or filtration, based on findings from San Joaquin Valley Air Pollution Control District staff reports. Alaska noted that The State evaluated the technological feasibility based on a review of charbroiler regulations from San Joaquin Valley Air Pollution Control District, South Coast Air Quality Management District, Bay Area Air Quality Management District, Utah Department of Environmental Quality, and the New York City Department of Environmental Protection. Finally, Alaska performed a cost analysis for each of these control technologies and provided an estimated range of costs for installing relevant emission controls, which is included in the docket for this action.

Alaska evaluated the annual costs of installing emission controls for under-fire charbroilers in new and existing restaurants. An ESP device was estimated to have an 86 percent control efficiency, while filtration was estimated to have 80 percent (wet scrubbers were assumed to perform similar control efficiency as filtration). Estimated costs were based on prior analyses by SJVAPCD and adjusted for higher costs in Alaska. Alaska estimated that installation costs in existing restaurants are twice the cost of new restaurants. Alaska's analysis estimates an annual cost in new restaurants ranging from $12,817 to $157,447, to install and operate emission controls. Such a range was based on equipment type, simple or complicated configuration, age of the restaurant's infrastructure, and more. Based on the control efficiencies, estimated cost effectiveness figures for ESP in new restaurants ranged from $41,467 to $506,171; while filtration ranged from $50,696 to $568,610.

The EPA finds that Alaska's cost calculations are appropriate for each of the control options and agree with the State that installing charbroiler emission controls is economically infeasible at this time. The EPA is thus finalizing approval of Alaska's $PM_{2.5}$ BACT and BACT determination that controls for charbroilers are economically infeasible at this time. The EPA agrees with Alaska's comment that the visible emission limit in 18 AAC 50.055 limit the direct $PM_{2.5}$ emissions from charbroilers. As a result, the EPA finds that the visible emission limit in 18 AAC 50.055 constitutes BACM for the charbroiler source category.

*Comment:* In its comments, Alaska evaluated the technological and economic feasibility of shipping used oil via the FNSB Solid Waste Division facility (Option 1). Alaska also evaluated the option of purchasing, operating, and maintaining a centrifuge facility in Fairbanks to process used oil

[87] Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards, *California Air Resources Board,* Staff Report, December 21, 2018; Revision to the California State Implementation Plan for $PM_{2.5}$ Standards in the San Joaquin Valley, *California Air Resources Board,* Staff Report, April 24, 2020. Both documents are included in the docket for this action.

[88] Note, in the Proposal, the EPA proposed to concur with this aspect of Alaska's analysis.

from all used oil generators in the community (Option 2).

In evaluating both options, Alaska reviewed data from 2010 and 2020 on used oil. In 2010, Alaska surveyed 25 local auto shops on used motor oil usage data. The survey estimated the total amount of unprocessed used motor oil used for burning purposes to be 135,100 gallons per year. In 2020, after adopting 18 AAC 50.078(c), Alaska sent 129 requests to possible businesses that may have a used oil burner in the Fairbanks $PM_{2.5}$ Nonattainment Area. Alaska received 47 responses to the requests for information. Of the responses received, 31 verified that there is no used oil burner present at the business location and 16 verified that there is a used oil burner present at the location. Some businesses had multiple used oil burners for a total of 19 used oil burners. Due to varied results concerning the fuel quality and quantity, Alaska did not find the 2020 collected data to be useful information. Thus, between the two data collection efforts, Alaska found the survey information obtained in 2010 to be comprehensive and based its evaluation of Options 1 and 2 on this information.

Alaska noted that the local solid waste facility already has a program in place as described above for accepting used oil from residents and very small quantity generators limited to 26 gallons (approximately 100 kilograms) of used oil per month. However, the facility does not accept used oil from large-quantity generators producing greater than 26 gallons per month. Due to this limitation, Alaska would have to explore other alternatives for large-quantity generators of used oil and Option 1, therefore, is only partly technologically feasible.

In evaluating economic feasibility, Alaska assumed the emissions reduction to be 50 percent since there is no information on the fraction of used oil used for direct combustion versus disposal (while shipping the used oil compared to disposal will result in 100 percent emissions reduction, replacing used oil for combustion will not result in 100 percent reduction as burning used oil results in additional emissions). As demonstrated by the cost-effectiveness calculations provided along with this comment, the cost-effectiveness for Option 1 is found to be \$730,182 per ton of $PM_{2.5}$ emissions reduction. The higher shipping cost per gallon and a lower reduction in emissions drive the higher cost-effectiveness numbers.

To evaluate the technological feasibility of Option 2, Alaska reached out to commercial vendors and referred to publicly available information from online vendors and the Fairbanks North Star Borough Solid Waste Division. Based on that information, Alaska found Option 2 to be technologically feasible (in terms of shipping and maintenance required for different components of the centrifuge facility).

In evaluating economic feasibility, Alaska assumed 100 percent emissions reduction by processing the used oil at the centrifuge facility. Costs to establish a centrifuge facility consist of building costs, equipment costs (consisting of centrifuge, tankage, and forklift), labor, and operational and maintenance costs. Discussions with commercial vendors highlighted that centrifuging used oil (*e.g.,* motor oil, cooking oil, and oil containing animal fat) is a labor-intensive process as the oil must be separated due to the differences in boiling point. As demonstrated by the cost-effectiveness calculations provided along with this comment, the cost-effectiveness for Option 2 is found to be \$653,989 per ton of $PM_{2.5}$ emissions reduction.

Based on Alaska's additional technological and economic feasibility analysis, Alaska's dismissal of Measure 70 is unchanged. The combustion of used oil is the only acceptable disposal method available in the Fairbanks $PM_{2.5}$ Nonattainment Area without shipping the used oil to a central facility at Anchorage or processing it at a centrifuge facility in Fairbanks. While Alaska found both options to be partly or fully technologically feasible, the economic analysis resulted in high cost-effectiveness numbers due to higher costs and minimal emissions reduction. Due to economic infeasibility, Alaska dismissed this measure as BACM in the Fairbanks $PM_{2.5}$ Nonattainment Area.

An additional comment noted that burning used oil is cost efficient and responsible compared to trucking it off site.

*Response:* The EPA proposed to disapprove Alaska's BACM analysis for used oil burners because Alaska's initial justification for not adopting control measures was not sufficient to demonstrate the measure was infeasible. In comments, Alaska provided additional information concerning potential control strategies that would achieve emission reductions and has assessed the economic feasibility these strategies.

Based on the additional facts and analysis that the State has provided, the EPA agrees that there is a significant cost to reducing $PM_{2.5}$ for this emission source category. However, we observed in the data provided by Alaska that for the waste oil emission estimates there are considerably more $SO_2$ emissions than $PM_{2.5}$ emissions, and thus potential for greater reductions in $SO_2$.[89] Alaska estimated $SO_2$ emissions of 0.0185 tons per day from waste oil (compared to 0.0026 tons per day for $PM_{2.5}$). Alaska estimates 135,150 gallons per year of waste oil is produced Fairbanks. By applying the $SO_2$ emission factor (instead of $PM_{2.5}$) into the cost calculations for each of the two options, the EPA estimates a cost effectiveness value of \$102,838 per $SO_2$ ton reduced for Option 1 and \$92,107 per $SO_2$ ton reduced for Option 2. While considering $SO_2$ emission reductions provides a more reasonable estimate of benefits, we agree with Alaska that Measure 70—banning used oil burners is economically infeasible as BACM at this time.

iv. Energy Efficiency and Weatherization Measures

a. Summary of Proposal

In the Proposal,[90] the EPA proposed disapproval of Alaska's BACM analysis with respect to potential energy efficiency and weatherization measures. The State had provided a number of reasons for declining to adopt and implement any such measures, each of which the EPA proposed to reject as bases to not adopt weatherization and energy efficiency measures. Specifically, the EPA noted the State and local government have the authority to require adequate insulation in buildings, particularly new construction. Therefore, the State's reliance on the ostensible lack of authority is not a valid justification for rejecting this type of control measure. In addition, the EPA stated in the Proposal that the just because emissions benefits are hard to quantify does not mean there are no emissions benefits. As stated above, the BACM requirement is generally independent of attainment needs. Finally, a State cannot reject a measure just because another jurisdiction has not adopted and implemented the measure.[91]

b. Final Rule

The EPA is finalizing disapproval of Alaska's BACM analysis and determination that no weatherization or energy efficiency type measures are required for purposes of BACM in the Fairbanks area. As noted in the responses to comments, the EPA

[89] ADEC comments on the Proposal, Docket Identification No. EPA–R10–OAR–2022–0115–0353–A5.

[90] The EPA Technical Support Document—control measures. EPA–R10–OAR–2022–0115–000004, at p. 34.

[91] See 81 FR 58010, August 24, 2016, at p. 58085.

encourages Alaska to evaluate this type of control measure and to identify, adopt, and implement all feasible measures as part of a subsequent SIP submission.

c. Comments and Responses

*Comment:* Several commenters asserted that improving building energy efficiency and weatherization practices are important strategies for reducing wood burning and improving air quality in the Fairbanks $PM_{2.5}$ Nonattainment Area. One commenter stated that most homes in the Fairbanks North Star Borough were built in the 1970s and 1980s.

*Response:* The EPA agrees with the commenters that improving energy efficiency and weatherization practices is an important strategy for reducing the amount of wood, and other fuels, combusted in the Fairbanks $PM_{2.5}$ Nonattainment Area and, thus, improving air quality. This is particularly important given the age of many homes in the Fairbanks $PM_{2.5}$ Nonattainment Area, because older homes may not meet modern energy efficiency building standards. In conjunction with other measures that Alaska has imposed to address source categories such as wood fired heating devices, reducing the usage of such sources through improved weatherization and energy efficiency would further reduce resulting emissions from these sources.

*Comment:* One commenter opposed the EPA's proposed disapproval of Alaska's rejection of weatherization measures, asserting that such measures are unrealistic.

*Response:* The comment does not provide a basis for its assertion that weatherization requirements are unrealistic or that imposing any weatherization requirement or program will be harmful. Nor does the comment provide a basis for demonstrating that all weatherization measures or programs are infeasible in the Fairbanks $PM_{2.5}$ Nonattainment Area.

The EPA notes that the Alaska Community Development Corporation offers a weatherization assistance program using Alaska Housing Finance Corporation and U.S. Department of Energy Funding.[92] This program reflects the energy efficiency benefits of weatherization and demonstrates the feasibility of implementing weatherization programs in Alaska. The EPA also notes there has been significant research and technological advances related to building and retrofitting homes in arctic and sub-arctic environments that also illustrates the feasibility of such measures.[93] Thus, the comment does not provide a basis for the EPA to approve Alaska's rejection of any weatherization and energy efficiency measures as BACM and BACT for sources in Fairbanks $PM_{2.5}$ Nonattainment Area.

*Comment:* Alaska commented that, in response to the EPA's proposed disapproval with respect to this issue, the State conducted a thorough review of weatherization and energy efficiency programs throughout the continental United States. Alaska also performed a deeper investigation of local efforts that it had not accounted for in Alaska's SIP submission to evaluate an emissions reduction commitment in the SIP. Based on this review, Alaska identified weatherization programs that fall into three board categories: (1) Public Education and Outreach Programs; (2) Energy Audits; and (3) Building Energy Codes.

With respect to public education and outreach programs, Alaska identified existing weatherization related programs implemented by the San Joaquin Valley Air Pollution Control District and Sacramento Metropolitan Air Quality Management District. These programs include educating the public on the effects of air pollution on health and dissemination of weatherization information in the form of pamphlets, brochures, and other materials.

Alaska also identified and evaluated weatherization-type controls implemented though building energy codes. Alaska identified several jurisdictions that incorporate building energy codes in SIP provisions, including the South Coast Air Quality Management District (''SCAQMD'') and Dallas-Ft Worth Texas Commission of Environmental Quality.

In addition, Alaska evaluated programs that perform energy audits. Alaska identified energy audit programs implemented in the City of Berkeley, San Francisco, California; Boulder, Colorado; Burlington, Vermont; and Ann Arbor, Michigan. According to Alaska, the City of Berkeley adopted its Building Energy Saving Ordinance (''BESO'') in 2015. BESO requires homeowners to complete energy efficiency assessments and publicly report the building's energy efficiency information. This assessment and reporting requirement is triggered by a sale, transfer, or renovation, and at specified intervals based on a phase-in schedule.

Alaska noted that it has several voluntary programs to provide weatherization measures, provide education and outreach, and improve energy efficiency. For example, the Alaska Housing Finance Corporation (''AHFC'') energy programs have continued to be implemented in the Fairbanks nonattainment area since Alaska adopted them as a voluntary measure under the Fairbanks Moderate Plan. Currently, AHFC offers an energy efficiency interest rate reduction (''EEIRR'') program, home energy loan program, and weatherization program. These programs are designed to make homes more energy efficient and reduce the amount of fuel and electricity required for power and heating purposes thereby leading to reduced emissions and air quality benefits.

In Fairbanks, the program is implemented by Interior Weatherization, Inc., (''Interior Weatherization'') a non-profit corporation founded in 1985. The program provides low- and moderate-income households with improvements to their homes at no cost to increase the energy efficiency of a dwelling. The organization's website states that it weatherizes approximately 500 homes each year and that it has improved over 5,000 homes since its inception.

Alaska also identified the Heating Assistance Program, administered by the Alaska Department of Health, which offsets the cost of home heating for households with income at or below 150% of the Federal poverty income guidelines, the Alaska Energy Authority's Energy Efficiency and Conservation education and outreach campaign, and the Southwest Alaska Municipal Conference's low-cost energy audits and grant assistance to small businesses and commercial fishers as ongoing voluntary programs.

With respect to building codes, according to Alaska, the AHFC has established Building Energy Efficiency Standards (''BEES'') to improve energy efficiency in the construction of new buildings. The BEES set standards for thermal resistance, air leakage, moisture protection, and ventilation. The AHFC requires these standards to be met only for buildings built on or after January 1, 1992, if the owner applies for AHFC financial assistance.

Alaska noted in its comments that implementation of these types of programs in Alaska varies depending on the availability of contractors to perform the work, funding levels, and changes in congressional authorizations. Alaska made clear that all such programs are

[92] *See* Alaska Community Development Corporation, Weatherization Assistance Program, *http://www.alaskacdc.org/weatherization-assistance-program.html.*

[93] *See* Cold Climate House Research Center, Retrofits, available at *http://cchrc.org/retrofits/.*

voluntary and therefore do not provide enforceable emission reductions.

Alaska commented that it does not intend to adopt any building energy efficiency codes or mandatory weatherization requirements due to limitations on ADEC's legal authority. Alaska stated that the City of Fairbanks is a home rule municipality that has exclusive authority to enforce a specific building code and the City has, indeed, enacted several discrete code provisions that could authorize certain weatherization measures. Because the City is a home rule entity with certain constitutional powers, the State would have to enact a statute to preempt the City's building code authority before Alaska could issue a regulations package requiring additional or new insulation. Thus, as of the date of this comment, neither the State nor the Borough has the authority to enact and enforce a building code measure that overlaps the authority of the City.

Alaska stated that outside Fairbanks city limits, but within the Fairbanks North Star Borough, the Borough implements the $PM_{2.5}$ Air Quality Control Program which includes voluntary home heating source removal funding. However, in 2018 voters approved the Home Heating Reclamation Act which precludes the Borough from ''in any way'' regulating, prohibiting, curtailing, banning, or issuing fines or fees associated with the sale, distribution, installation, or operation of solid fuel heating appliances or any type of combustible fuels. Thus, according to Alaska, even though the Borough may have the authority to provide for air pollution control by virtue of Alaska Statute (AS) 29.35.210 and AS 46.14.400, the Borough cannot exercise that authority. According to Alaska, the Borough does not have the authority to enact and enforce a building code.

Alaska commented that it may have some State law authority to adopt and enact weatherization measures such as insulation requirements pursuant to AS 46.03.020 (10) and AS 46.14.030 within the Borough. However, Alaska commented that it lacks the technical expertise to implement such a measure and that such measures would be economically infeasible due to the implementation and enforcement costs and small emission reduction benefits.

Alaska also commented that weatherization and energy efficiency measures would not be necessary or required if the EPA had not failed to correctly test and certify wood stoves under the NSPS. Alaska commented that improving the efficiency of the residence is necessarily subsequent to the heating process—it is a reaction to the source (*e.g.* the stove). According to Alaska, the heating source was purchased and installed on the basis that it did not exceed emission standards and was tested and certified as such. Thus, Alaska concluded, consideration and adoption of weatherization and energy efficiency measures is only necessary due to the EPA's failure to property test and certify wood stoves.

Finally, Alaska commented that to address the EPA's disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan for lack of energy efficiency and weatherization control measures it will propose a regulation requiring a robust advertising and education program to the citizens of Fairbanks North Star Borough and will include best practices to improve efficiency in an arctic environment and available economic and practical mechanisms that can assist homeowners in improving both efficiency and regulatory compliance. Alaska also commented that it will disseminate weatherization information in the form of pamphlets or brochures.

In addition, Alaska commented that it plans to implement a regulation requiring energy efficiency audits for buildings at the time of conveyance. The regulation will consist of a building owner completing an energy efficiency assessment with a licensed energy assessor. This measure will require the owners to pay for the audit. Any improvements identified by the assessor are voluntary. Alaska noted the difficulty of implementing this measure due to lack of qualified energy auditors in the Fairbanks North Star Borough.

*Response:* The EPA disagrees with the Alaska's view that no weatherization- or energy efficiency-type control measures are needed to meet BACM requirements in the Fairbanks area. The EPA appreciates that the State did further investigation and analysis of the types of measures that, if adopted, might meet BACM requirements for the Fairbanks $PM_{2.5}$ Nonattainment Area. This additional analysis illustrates the types of measures that other jurisdictions have enacted as SIP provisions to achieve this objective.

The EPA acknowledges the various voluntary incentive programs in Alaska for energy efficiency upgrades and weatherization. These measures, however, do not appear to meet the EPA guidelines for enforceability and SIP emission reduction credit.[94] The EPA also notes that the City of Fairbanks and City of North Pole have adopted building and energy efficiency codes; however, these codes are not included in Alaska's SIP and only cover a portion of the Fairbanks $PM_{2.5}$ Nonattainment Area.[95] Alaska's comment indicates that several jurisdictions have implemented different forms of energy efficiency and weatherization programs beyond Alaska's voluntary measures. This supports the EPA's disapproval of Alaska's rejection of these measures.

Alaska misconstrues the EPA's statements regarding authority. First, Alaska cited a lack of authority as a basis for technological infeasibility of weatherization and energy efficiency measures. In the Technical Support Document reviewing this determination, the EPA stated that the State and local governments have the authority to require adequate insulation in buildings, particularly new construction.[96] The CAA requires States to provide necessary assurances that ''the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local government for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof).'' [97]

By ''State,'' the EPA did not mean merely ADEC, but the State of Alaska.[98] A State is required to have legal authority under State law to meet CAA requirements. A State may under State law elect to share its authority and responsibility for meeting CAA requirements with local governments.[99] Having done so, however, it is not appropriate for a State to claim that it cannot meet a CAA requirement due to this division of authority and responsibility.

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[94] See $PM_{2.5}$ SIP Requirements Rule, 81 FR 58010, August 24, 2016, at p. 58139; see also U.S. Environmental Protection Agency, Office of Air and Radiation, Incorporating Emerging and Voluntary Measures in a State Implementation Plan (SIP), September 2004, available at *https://www.epa.gov/sites/default/files/2016-02/documents/emerging_vol_measures.pdf.*

[95] City of Fairbanks Ordinance 6153; City of North Pole Code 15.12.010.

[96] Jentgen, M. (September 27, 2022). *Technical support document for Alaska Department of Environmental Conservation's (ADEC) control measure analysis, under 40 CFR 1010(a) and (c).* U.S. Environmental Protection Agency, Region 10, Air and Radiation Division.

[97] CAA section 110(a)(2)(E)(i), 42 U.S.C. 7410(a)(2)(E)(i).

[98] CAA section 302(d), 42 U.S.C. 7602(d).

[99] 40 CFR 51.232.

The legislative power of the State is vested in the Legislature.[100] Regarding Home Rule Cities and Boroughs, the EPA acknowledges that certain home rule cities and borough may have exclusive legislative powers under the Constitution of the State of Alaska, including building codes. This does not mean that no State or local government has authority to enact weatherization or energy efficiency measures, but merely means that the home rule city or borough must do so. The EPA approved SIPs often include city and county ordinances for this reason.[101] Such local control may mean that multiple city and borough ordinances need to be incorporated into a State's SIP and approved by the EPA to ensure coverage across a particular nonattainment area. With respect to the economic feasibility of implementing weatherization measures and building codes, the cost to the State or local agency of administering a control measure is not a valid consideration when evaluating the economic infeasibility of the measure nor a valid basis for not implementing an otherwise feasible measure.

The EPA also disagrees with the commenter's assertion that weatherization and energy efficiency measures are only necessary because certain woodstoves operated in the nonattainment area do not meet the NSPS. The EPA rejects the premise that weatherization and energy efficiency measures are necessarily a reaction to the heating source or that the emission performance of a space heater correlates to the energy efficiency or insulation of the home. Weatherization and energy efficiency measures, such as increased insulation, improve the retention of space heat regardless of the source of such heat and regardless of air pollutant emissions (if any) from that source.[102] Thus, improved weatherization and energy efficiency have the potential to reduce emissions from all space-heating source categories—not just the solid fuel burning source category.

Moreover, the EPA believes that improved heat retention means less fuel use, which means less cost to the resident.[103] As a result, better heat retention can reduce costs for all residents and may make switching to higher cost fuels more affordable for residents. In contrast, poor weatherization and energy efficiency can undermine advances in the emissions performance of space heaters because it forces the operator to burn more fuel to heat a volume of air. Thus, the EPA's position remains that disapproval of Alaska's rejection of this measure is appropriate.

In response to the Proposal, Alaska's comments indicate that the State intends to evaluate and adopt additional measures to address weatherization and energy efficiency. For example, the State indicated its intention to propose a regulation to require a more robust advertising and education program to advise residents of best practices to improve energy efficiency, and about available economic and practical mechanisms to improve energy efficiency, analogous to such efforts in other jurisdictions. Likewise, the State indicated that it intends to evaluate and adopt a regulation related to energy efficiency audits, analogous to efforts in other jurisdictions. The EPA will review Alaska's revised energy efficiency and weatherization measures once Alaska formally submits them to the EPA as part of a SIP revision. Consistent with the CAA and $PM_{2.5}$ SIP Requirements Rule, the EPA encourages Alaska to identify, adopt, and implement all feasible energy efficiency and weatherization measures.

v. Emissions From Mobile Sources

a. Summary of Proposal

Alaska identified and evaluated several mobile source emission reduction measures and other transportation control measures as potential BACM for purposes of the 2006 24-hour $PM_{2.5}$ NAAQS in the Fairbanks $PM_{2.5}$ Nonattainment Area. These measures included: California Air Resources Board (CARB) vehicle standards (Measure 54); school bus retrofits (Measure 55); road paving (Measure 56); controls on road sanding and salting (Measure 58); a vehicle inspection and maintenance (I/M) program (Measure 59); vehicle idling restrictions (Measure 60); and Other transportation control measures (Measures 57 and R20) including high-occupancy vehicle (HOV) lanes, traffic flow improvements, non-motorized traffic zones; employer-sponsored flexible work schedules, diesel fleet retrofitting (school buses, transit fleets), an on-road vehicle I/M program; a heavy-duty vehicle I/M program, and a low-emission vehicle (LEV) program. Alaska rejected each of these measures as either technologically infeasible, economically infeasible, providing low emissions reductions benefits, or because emissions reductions benefits are difficult to quantify.

The EPA proposed to approve in part and disapprove in part Alaska's BACM determinations with respect to these potential measures. Specifically, the EPA proposed to approve Alaska's rejection of the CARB vehicle standards (Measure 54) as economically infeasible. The EPA proposed to approve Alaska's rejection of school bus retrofits (Measure 55); road paving (Measure 56); and controls on road sanding and salting (Measure 58) as technologically infeasible. Finally, the EPA proposed to approve Alaska's rejection of a vehicle I/M program (Measure 59) because such a program only reduces $NO_X$ and VOC emissions and the EPA proposed to approve Alaska's precursor demonstration that shows NOx and VOCs are not significant precursors to $PM_{2.5}$ formation in the Fairbanks $PM_{2.5}$ Nonattainment Area.

The EPA also proposed to approve Alaska's determination that no $NH_3$-specific emission controls exist for this source category. However, the EPA proposed to disapprove Alaska's rejection of vehicle idling restrictions (Measure 60) and other transportation measures (Measures 57 and R20) [104] as BACM. In support of its proposed disapproval, the EPA noted that Alaska did not demonstrate that these specific measures were either technologically or economically infeasible. The EPA further noted that BACM is generally independent of attainment needs and that Alaska cannot reject potential BACM merely because the emissions from a source category are de minimis. Finally, the EPA stated that certain on-going transportation programs for which Alaska took credit were not included in the SIP submission.

b. Final Rule

The EPA is finalizing approval of Alaska's rejection of the CARB vehicle standards (Measure 54) as economically infeasible, as proposed. The EPA is likewise finalizing approval of Alaska's rejection of school bus retrofits (Measure 55) road paving (Measure 56); and controls on road sanding and salting (Measure 58) as technologically infeasible, as proposed. The EPA is also finalizing approval of Alaska's rejection of a vehicle I/M program (Measure 59),

[100] The Constitution of the State of Alaska, Article II, Section 1.

[101] *See, e.g.,* 40 CFR 52.70(c), Table 3.

[102] See U.S. Department of Energy, Energy Saver—Insulation, available at *https://www.energy.gov/energysaver/insulation.*

[103] *Id.* See also, U.S. Environmental Protection Agency, Energy Resources for State and Local Governments, Local Residential Energy Efficiency, available at *https://www.epa.gov/statelocalenergy/local-residential-energy-efficiency.*

[104] Measure R20 includes: HOV lanes; Traffic flow improvement program; Create non-motorized traffic zones; Employer-sponsored flexible work schedules; Retrofit diesel fleet (school buses, transit fleets); On-road vehicle I/M program; Heavy-duty vehicle I/M program; and State LEV program.

as proposed. The EPA is also finalizing its approval of Alaska's determination that no $NH_3$-specific emission controls exist for this source category.

Based on comments received, the EPA is finalizing approval in part and disapproval in part of Alaska's rejection of vehicle idling restrictions (Measure 60) and Other Transportation Measures (Measures 57 and R20). Specifically, the EPA is finalizing approval of Alaska's rejection of vehicle idling restrictions for heavy-duty diesel vehicles as economically infeasible. The EPA is finalizing disapproval of Alaska's rejection of vehicle idling restrictions for light-duty vehicles at schools and commercial establishments. The EPA is finalizing approval of Alaska's rejection of other transportation measures (Measures 57 and R20) as either technologically infeasible (HOV lanes) or economically infeasible (traffic flow improvements, diesel retrofit projects, and ridesharing programs).

c. Comments and Responses

The EPA received no comments regarding its proposed approval of Alaska's rejection of the CARB vehicle standards (Measure 54), school bus retrofits (Measure 55), road paving (Measure 56); controls on road sanding and salting (Measure 58); and Vehicle I/M program (Measure 59) as either technologically or economically infeasible. The EPA received no comments regarding its proposed approval of Alaska's determination that no $NH_3$-specific emission controls exist for this source category.

The EPA received one comment supportive of imposing vehicle idling restrictions. The EPA received several comments opposing the EPA's Proposal to disapprove Alaska's rejection of vehicle idling restrictions (Measure 60) and other transportation measures (Measures 57 and R20).

*Comment:* One commenter stated that ''vehicle pollution is a smaller component of the problem. Idling vehicles in parking lots create a lot of exhaust. Just like burning wood on bad days, vehicle idling needs to be curtailed.''

*Response:* The EPA agrees with the commenter that idling vehicles in parking lots creates exhaust which degrades air quality, particularly during air stagnation events. The EPA also agrees that absent a credible technological or economic infeasibility demonstration, Alaska should impose vehicle anti-idling restrictions. As discussed in the following paragraphs of this preamble, the EPA is disapproving Alaska's determination that anti-idling measures are technologically and economically infeasible. The EPA encourages Alaska to adopt and implement an anti-idling regulation and incorporate this regulation into a subsequent SIP submission.

*Comment:* Alaska opposed the EPA's proposed disapproval of Alaska's rejection of vehicle idling restrictions and Other Transportation Measures on three main grounds: (1) Alaska did not predicate its rejection of the measures on a determination that the mobile source category is de minimis and its initial rejection of the measures was consistent with the CAA, $PM_{2.5}$ SIP Requirements Rule, EPA guidance, and other prior EPA actions on other State's SIPs; (2) certain measures are approved into the Alaska SIP; and (3) the measures are infeasible based on a supplementary analysis.

Alaska asserted that it did not reject the control measures based on a determination that the source category was de minimis. Alaska stated that it did not determine that the mobile source category had a de minimis contribution to $PM_{2.5}$ levels or predicate dismissal of the control measures on that basis. Rather, Alaska dismissed the measures as technologically infeasible. Alaska also noted that the EPA inconsistently interpreted and applied the $PM_{2.5}$ SIP Requirements Rule in proposing to disapprove Alaska's BACM analysis for the mobile source category. Specifically, Alaska cited to two prior EPA actions approving nonattainment plans submitted by South Coast Air Quality Management District and San Joaquin Air Quality Management District that rejected certain control measures as technologically infeasible on similar grounds as Alaska.

As to whether certain measures were SIP approved, Alaska asserted that the EPA approved expanded availability of plug-ins and an ordinance mandating electrification of outlets at certain temperatures as RACM in the Fairbanks Moderate Plan. Alaska also commented that all ongoing transportation programs in the approved Fairbanks Moderate Plan are transportation control measures for conformity purposes.

Finally, Alaska provided supplemental economic infeasibility demonstrations for HOV lanes, traffic flow improvements, anti-idling measures, diesel retrofit projects, and ridesharing programs. Regarding HOV lanes, ADEC evaluated the feasibility of constructing an HOV Lane on the Steese Expressway, a four-lane divided highway in the area. As part of its assessment, Alaska assumed peak hour volume and a conservative highway capacity. Alaska determined that even with these conservative assumptions, the Steese Expressway would experience a reasonably free-flow operations and free flow speed. Thus, Alaska concluded that construction of an HOV lane on the Steese Highway or similar four-lane divided highways in the Fairbanks $PM_{2.5}$ Nonattainment Area would provide no emissions benefits and would be technologically infeasible.

With respect to Traffic flow improvements, Alaska conducted an economic feasibility assessment of traffic signal improvements and synchronization, roundabouts, and intersection improvement projects. Alaska determined that the cost effectiveness of each of these projects exceeded $1 million per ton of $PM_{2.5}$ removed.

For anti-idling measures, Alaska conducted economic feasibility assessments of implementing an anti-idling program of heavy-duty diesel vehicles, light-duty passenger vehicles at schools, and light-duty passenger vehicles at commercial establishments. Alaska determined that the cost effectiveness of implementing these programs ranged from $455,675.88 to $210,198,489 per ton of $PM_{2.5}$ reduced.

Alaska also evaluated the economic feasibility of diesel retrofit projects. Alaska referenced a Federal Highway Administration study that evaluated 27 diesel retrofit projects that consisted of retrofitting older diesel vehicle engines with emissions reduction technologies such as diesel particulate filters, selective catalytic reduction, diesel oxidation catalysts, and exhaust gas recirculation technologies. According to the study, the median cost effectiveness was $165,130 per ton of $PM_{2.5}$ reduced.

Similarly, Alaska evaluated the economic feasibility of implementing various ridesharing programs. Alaska referenced a Federal Highway Administration (FHWAI) study that evaluated 40 ridesharing programs. Based on the study, Alaska determined that the median cost effectiveness of implementing the programs would $6,010,024 per ton of $PM_{2.5}$ reduced.

In addition to Alaska, Fairbanks Area Surface Transportation (FAST) Planning opposed the EPA's proposed disapproval of Alaska's rejection of vehicle idling restrictions and other transportation measures. FAST Planning commented that Alaska did not predicate its rejection of the measures on a determination that the mobile source category is de minimis. FAST Planning also noted that the EPA was internally inconsistent in its Proposal—proposing to approve Alaska's rejection of vehicle I/M program (Measure 59) and proposing to disapprove Alaska's rejection of a similar I/M program

evaluated as part of a suite measures included as other transportation control measures (Measure 57, Measure R20).

FAST Planning commented that the EPA is requiring the State to consider implementing transportation controls that will result in limited to no reductions of $PM_{2.5}$ emissions without regard to cost to the community. Similarly, FAST Planning commented that some measures are not warranted or appropriate for the Fairbanks nonattainment area. In particular, FAST Planning stated that HOV lanes are not appropriate for the Fairbanks $PM_{2.5}$ Nonattainment Area because they are meant for communities with much larger populations and severe congestion. Fairbanks has a comparatively small traffic size and has a lack of congested roadways.

FAST Planning also commented that the EPA did not provide credit to the State for existing and ongoing transportation control measures listed in the SIP. FAST Planning asserted that Alaska included a list of voluntary transportation measures in the SIP submission (such as the expansion of transit service, motor vehicle plug-ins, public education and outreach, and anti-idling measures). FAST Planning stated that these measures are not voluntary because the State is required to fund these measures.

*Response on de minimis source category comments:* The EPA acknowledges that Alaska did not explicitly designate the mobile source category as a de minimis source category in the Fairbanks Serious Plan and Fairbanks 189(d) Plan for the purposes of avoiding adopting and implementing BACM and BACT on mobile sources. The EPA's proposal to disapprove Alaska's rejection of these control measures for mobile sources was based on several factors: (1) low emissions benefits is not a valid basis to reject a measure as technologically infeasible; (2) BACM is generally independent of attainment needs; and (3) Alaska's rejection of all measures to control emissions from mobile sources appeared to implicitly determine that this source category was de minimis. The EPA notes that in its comments Alaska supplemented its infeasibility demonstrations for the mobile source control measures. These supplemental demonstrations alleviate the EPA's concern about effectively determining that the mobile source category is de minimis. The ensuing discussion provides further explanation for the EPA's proposed disapproval and position regarding technologically infeasibility demonstrations:

CAA section 189(b) and 40 CFR 51.1010(a) contain the control measure requirements for Serious areas. CAA section 189(d) and 40 CFR 51.1010(c) contain the control measure requirements for Serious areas that fail to attain. The EPA summarized these requirements in the proposed rule.[105] Of particular relevance here, in accordance with 40 CFR 51.1010(a), the State must adopt and implement the best available control measures and technologies for each emission source. However, the State may demonstrate that any measure identified under 40 CFR 51.1010(a)(2) is not technologically or economically feasible to implement in whole or in part by the end of the tenth calendar year following the effective date of designation of the area and may eliminate such whole or partial measure from further consideration.

In addition, the EPA's longstanding interpretation of the CAA is that BACM and BACT determinations are to be generally independent of attainment for purposes of implementing the $PM_{2.5}$ NAAQS.[106] The EPA interprets the CAA requirement to impose BACM and BACT-level control as requiring more emphasis on what controls are the best for the relevant source and whether those controls are feasible rather than on the attainment needs of the area.[107] Finally, States also may not decline to evaluate, or to control as necessary, sources or source categories on the basis that they are de minimis.[108]

Subsequently, for a State with a Serious $PM_{2.5}$ nonattainment area that has failed to attain by the applicable attainment date, the State must submit a revised attainment plan with a control strategy that (1) demonstrates that each year the area will achieve at least a 5 percent reduction in emissions of direct $PM_{2.5}$ or a 5 percent reduction in emissions of a $PM_{2.5}$ plan precursor based on the most recent emissions inventory for the area and (2) includes such other additional control measures necessary to achieve attainment as expeditiously as practicable consistent with the attainment date requirements under 40 CFR 51.1004(a)(3).[109] The regulation at 40 CFR 51.1010(c) required the State to reconsider and reassess any measures previously rejected by the State during the development of any Moderate area or Serious area attainment plan control strategy for the area.

Based on these requirements and interpretations, the EPA proposed to disapprove Alaska's rejection of certain control for the mobile source category (Measures 57, 60, and R20). Alaska's evaluation of other transportation control measures consisted of a review of measures evaluated as RACM for the Fairbanks Moderate Plan.[110] Alaska referenced the prior analysis as determining limited emission reduction benefits from these measures. Alaska also referenced the EPA and FHWA studies that indicated small emissions reductions from these measures.[111] In addition, while Alaska acknowledged that these measures are technologically feasible in the analysis,[112] it concluded that the measures are not technologically feasible in the Fairbanks area.[113] Alaska did not re-evaluate this analysis or conclusion as part of the Fairbanks 189(d) Plan.[114]

Alaska's evaluation of anti-idling programs (Measure 60) in the Fairbanks Serious Plan consisted of a study of the effects on carbon monoxide emissions of turning off a warmed-up vehicle compared to leaving it running.[115] Alaska concluded based on this study that further study of $PM_{2.5}$ emission reductions is necessary to determine whether anti-idling programs are feasible. Nevertheless, ADEC concluded that such a measure would produce no emissions benefit and was, therefore, technologically infeasible. Alaska modified this analysis slightly as part of the 189(d) Plan—drawing a connection between low carbon monoxide (CO) emission benefits and low $PM_{2.5}$ benefits.[116] Alaska ultimately concluded anti-idling programs are technologically infeasible due to lack of evidence of emission benefits.

However, the emissions reduction benefit of a particular measure is not a factor assessing whether the measure is

[105] 88 FR 1454, January 10, 2023, at pp. 1464–1465.

[106] Addendum to the General Preamble, 59 FR 41998, August 16, 1994, at p. 42011; 81 FR 58010, August 24, 2016, at p. 58081.

[107] *Id.*

[108] 81 FR 58010, August 24, 2016, at p. 58082.

[109] CAA section 189(d), 42 U.S.C. 7513a(d), and 40 CFR 51.1010(c).

[110] State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at p. 166 (November 19, 2019).

[111] *Id.* at p. 167–168.

[112] *Id.* at 168 (''With regard to the BACM finding, transportation control measures are technologically feasible; they have been implemented all over the country. That said, independent studies have documented that while states and communities continue to adopt them, where funding is available, growing experience in lower-48 states has demonstrated emissions benefits are limited.'').

[113] *Id.*

[114] State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at pp. 5435–538, adopted November 18, 2020.

[115] State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at pp.105–106, adopted November 19, 2019.

[116] State Air Quality Control Plan, Vol. III, Appendix III.D.7.7 at pp. 5405–5406, adopted November 18, 2020.

technologically feasible. Such considerations are more appropriate under an economic feasibility assessment. Alaska did not assess the economic feasibility of anti-idling programs or any of the other transportation control measures as part of the Serious Area Plan or 189(d) Plan. The EPA notes, however, that Alaska submitted supplemental infeasibility demonstrations as part of its comments.

Relatedly, the substantive basis for Alaska's rejection of these measures was that they provided limited emissions benefits, such benefits were difficult to quantify given the climate in Fairbanks, and/or that additional studies were necessary to understand the emissions reduction benefits. The EPA's position is that these are inadequate reasons for rejecting otherwise feasible measures.

*Response to Alaska's comment on inconsistent application of the $PM_{2.5}$ SIP Requirements Rule:* The EPA disagrees with Alaska that it interpreted and applied the $PM_{2.5}$ SIP Requirements Rule inconsistently with respect to the EPA's proposed disapproval of Alaska's BACM analysis for the mobile source category. Contrary to Alaska's assertions, a comparison of the EPA's actions on the South Coast Air Quality Management Plan and 2018 San Joaquin Valley $PM_{2.5}$ Plan with the EPA's review of the Fairbanks Serious Plan and Fairbanks 189(d) evinces the EPA's consistent application of the CAA and $PM_{2.5}$ SIP Requirements Rule.

On April 27, 2017, the California Air Resources Board (CARB) submitted two SIP submissions to the EPA for the South Coast Serious nonattainment area for the 2006 $PM_{2.5}$ NAAQS.[117] One such submission was entitled Final 2016 Air Quality Management Plan (March 2017) (2016 AQMP) and contained, inter alia, control strategies for mobile sources. The EPA proposed to approve these SIP submissions as meeting CAA requirements for the 2006 $PM_{2.5}$ 24-hour NAAQS on October 3, 2018.[118] For the mobile source category, the EPA proposed to approve the control strategy for numerous reasons.

According to the 2016 AQMP, CARB and other State agencies implemented 24 individual mobile source and transportation control measures, including school bus idling measures, school bus retrofit program, and heavy-duty vehicle inspection program.[119] Pursuant to a SIP-approved transportation control measure selection and rollover process,[120] several government agencies in the South Coast area implemented numerous major transportation control measures in South Coast, including HOV lanes, regular transit bus, bus rapid and express bus, transit rail, and bikeway projects.[121]Appendix IV–C of the 2016 AQMP includes a list of TCM projects that are specifically identified and committed to in the plan, including, among many other types of TCMs, traffic flow improvement projects.[122]

For the 2016 AQMP, in order to determine whether adoption of additional controls on mobile sources was necessary to satisfy the BACM requirement, the Southern California Association of Governments (SCAG) surveyed other nonattainment areas. SCAG is the region's metropolitan planning organization. SCAG found that, at the time of the survey, no other nonattainment areas were implementing measures beyond what CARB, SCAG and the local agencies already implemented.[123] Thus, SCAG reevaluated 24 measures previously rejected as RACM for potential implementation as BACM.[124] SCAG summarized its evaluation in Table 9 of Appendix IV–C of the 2016 AQMP. However, a more thorough analysis is included as Attachment B to Appendix IV–C of the 2016 AQMP. A review of Attachment B indicates that for each measure dismissed, SCAG correctly cited a technological or economic infeasibility basis. For example, SCAG evaluated numerous specific anti-idling measures and adopted some, while determining that others raised safety concerns or were economically infeasible.[125]

Alaska's comments appear to target measures that SCAG dismissed as providing no emissions benefits as the crux of its inconsistency argument. The EPA disagrees that SCAG's analysis or the EPA's subsequent approval of California's SIP submission demonstrate inconsistent application of the $PM_{2.5}$ SIP Requirements Rule. Measures that SCAG dismissed as providing no emissions benefits included banning left turns, limiting excessive car dealership vehicle starts, requiring pay-as-you drive insurance, and demolishing impounded vehicles that are high emitters.[126] SCAG noted that some left turns were already banned and other rules incentivized destruction of high-emitting vehicles.[127] For a measure referred to as limiting excessive car dealership starts, SCAG noted that car dealerships need to start cars to avoid battery failure and that in contrast to colder climates where vehicles are started on a daily basis, and the South Coast Air Quality Management District had determined that vehicles in the South Coast are started less frequently. For pay-as-you-drive insurance, SCAG noted that there was no clear demonstration of emission reduction benefits. Given this context, the EPA has consistently interpreted and applied the $PM_{2.5}$ SIP Requirements Rule in its action on the 2016 AQMP and proposed action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan.

As for the San Joaquin $PM_{2.5}$ Nonattainment area, on March 27, 2020, the EPA proposed to approve the portions of the 2018 San Joaquin Valley Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (2018 SJVAPCD Plan) and the San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan that pertain to the 2006 24-hour $PM_{2.5}$ NAAQS.[128] The EPA finalized its approval on July 22, 2020.[129] The EPA determined that CARB's control measures for the mobile source category constituted the most stringent control program currently available.[130] The 2018 SJVAPCD Plan includes existing measures and CARB and San Joaquin Air Quality Management District's identification and evaluation of additional measures.[131] The evaluation of mobile source controls is embodied in Appendix D—Mobile Source Control Measure Analyses to the 2018 SJVAPCD Plan. Notably, CARB implements the control measures Alaska rejected as part of the Fairbanks Serious Plan and Fairbanks 189(d) Plan, including a vehicle inspection program, school bus anti-idling measures (School Bus Airborne Toxic Control Measure in effect since July 16, 2003),[132] and a

[117] Approval and Promulgation of Implementation Plans; California; South Coast Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS, 83 FR 49872, October 3, 2018, at p. 49873.

[118] *Id.* at 49872. The EPA finalized approval on February 12, 2019. Approval and Promulgation of Implementation Plans; California; South Coast Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS, 84 FR 3305, February 12, 2019, at p. 3308.

[119] 2016 AQMP at Appendix IV–C–29.

[120] 40 CFR 52.220(c)(204)(i)(B)(*2*). The specific TCM selection and rollover process is identified in the 1994 South Coast AQMP as TCM–1 (''Transportation Improvements'').

[121] 2016 AQMP at Appendix IV–C–34.

[122] *Id.* at IV–C–51—IV–C–74.

[123] *Id.* at IV–C–36—IV–C–40.

[124] *Id.* at IV–C–40—IV–C–50.

[125] *Id.* at 100–101.

[126] *Id.* at 43—50.

[127] *Id.* at 43; 49.

[128] Clean Air Plans; 2006 Fine Particulate Matter Nonattainment Area Requirements; San Joaquin Valley, California; 85 FR 17382, March 27, 2020.

[129] 85 FR 44192, July 22, 2020.

[130] Clean Air Plans; 2006 Fine Particulate Matter Nonattainment Area Requirements; San Joaquin Valley, California, 85 FR 17382, March 27, 2020, at p. 17404.

[131] *Id.*

[132] 2018 SJVAPCD Plan at Appendix D, D–42.

Heavy-Duty Diesel Vehicle Idling Reduction Program.[133]

Contrary to Alaska's assertion, CARB's BACM and MSM evaluation for mobile sources and the EPA's approval of the resultant SIP submissions indicates the EPA's consistent interpretation and application of the $PM_{2.5}$ SIP Requirements Rule. CARB demonstrated that for multiple mobile sources, it had already adopted the most stringent measures and committed to adopting additional measures. As with the 2016 AQMP, the EPA's action on the 2018 SJVAPCD Plan when compared to its proposed action on the Fairbanks Serious Plan and Fairbanks 189(d) does not indicate inconsistent interpretation or application of the $PM_{2.5}$ SIP Requirements Rule.

*Response to Alaska's comment on prior SIP approvals:* Regarding controls included in the Fairbanks Moderate Plan, the commenters correctly point out that the EPA previously approved the Moderate Plan, including RACM for the mobile source category.[134] The approved measures included: Fairbanks North Star Borough Ordinance No. 2001–17 that requires employers or businesses that have 275 or more parking spaces to provide power to electrical outlets at temperatures of 20 degrees F or lower for engine block heaters; expanded availability of plug-ins; public education focused on the benefits of plugging-in and using the transit program; expanded transit service; commuter van pool program; anti-idling program for heavy-duty diesel vehicles focused on the purchase and installation of auxiliary heaters to reduce idle time; and the Federal motor vehicle control program.[135]

Save for the Fairbanks North Star Borough Ordinance and the Federal standards, these measures were designated as voluntary in the moderate plan and the EPA's approval.[136] These RACM, however, do not fully satisfy the CAA BACM requirements. As part of the BACM evaluation process, ADEC identified additional measures for the mobile source category or reevaluated measures previously rejected as part of development of the Moderate Plan. In accordance with 40 CFR 51.1010(a) and (c), Alaska must either adopt those measures or provide a demonstration that those measures are not technologically or economically feasible. Alaska did not adopt all identified measures and did not demonstrate that those measures were either technologically or economically feasible consistent with the $PM_{2.5}$ SIP Requirements Rule. Therefore, the EPA proposed to disapprove the Fairbanks Serious Plan and Fairbanks 189(d) plan, in part, on that basis.

*Response to Alaska's supplemental feasibility analyses:* Turning to ADEC's updated BACM analysis submitted as part of its comments, the EPA finds that Alaska has demonstrated that constructing HOV lanes is technologically infeasible at this time and anti-idling requirements on heavy-duty diesel vehicles, traffic flow improvements, diesel retrofit programs, and ridesharing programs are economically infeasible at this time. The EPA evaluated Alaska's cost-effectiveness calculations and confirmed the inputs and calculation methodology are sound and reasonable. The EPA finds that Alaska has not demonstrated that anti-idling requirements on light duty vehicles at schools and commercial establishments are either technologically or economically infeasible.

Regarding anti-idling restrictions on heavy-duty diesel vehicles, Alaska submitted, as part of its comments on our proposed action, an economic infeasibility assessment that concluded that such a measure has a cost per $SO_2$ ton reduced of $455,675.88. Alaska based its cost effectiveness calculations on information gained from a July 2011 anti-idling pilot project conducted by the Alaska Department of Transportation & Public Facilities.[137] According to its comments, Alaska estimated the heavy-duty vehicle fleet $PM_{2.5}$ idle emission rates using the MOVES3 model. The costs of implementing the program include purchasing and installing auxiliary heaters, such as cab heaters and hydronic coolant heaters. Alaska's cost effectiveness calculations appear sound. Thus, the EPA concurs with Alaska's assessment that anti-idling restrictions on heavy-duty diesel vehicles are economically infeasible at this time.

With respect to vehicle anti-idling restrictions for light-duty passenger vehicles at schools and commercial establishments, Alaska commented that imposing such anti-idling restrictions would pose an unacceptable safety risk. Alaska also included an economically infeasibility assessment. With respect to safety risks, Alaska stated, ''ADEC has significant safety concerns regarding these measures. As was evidenced during the Public Hearing in Fairbanks on March 9, 2023, when temperatures are −20 to −60, idling is often done to ensure that small children and infants aren't exposed to frostbite conditions or to prevent cars from being stranded after being turned off without being plugged in to a heat source.''

The EPA recognizes the potential safety risk posed to vehicle occupants of an absolute prohibition on idling. However, Alaska need not impose such a prohibition to adopt and implement idling restrictions that satisfy controls strategy requirements for Serious areas and Serious areas the fail to attain. A review of State and local anti-idling restrictions illustrates a variety of approaches to limiting idling.[138] Many of these examples include idling duration limits that vary depending on ambient temperature and provide exemptions for safety.[139] Likewise, Alaska may adopt an anti-idling regulation that takes into consideration the unique local conditions in the Fairbanks $PM_{2.5}$ Nonattainment Area.

Alaska did not provide data supporting the prevalence of cars failing to start or run in cold weather in the Fairbanks nonattainment area. The EPA searched for documentation of this issue and could not find any studies or data. The EPA did find information that indicates that frequent engine restarts have little impact on engine components and unnecessary vehicle idling can damage engine components and waste fuel.[140]

The EPA reviewed the transcript from the public hearing for statements regarding idling cars to protect children and cars being stranded without being plugged into a heat source. The EPA found that one commenter raised concerns about electric vehicles failing to work in cold weather.[141] However, this comment was contradicted by another commenter who testified to

[133] *Id.* at D–41 and D–42.

[134] 82 FR 42457, September 8, 2017.

[135] 82 FR 42457, September 8, 2017; State Air Quality Control Plan, Volume III, Appendix III.D.5.7–43, adopted December 24, 2014.

[136] State Air Quality Control Plan, Volume III, Appendix III.D.5.7–24, adopted December 24, 2014; 82 FR 9035, February 2, 2017, at p. 9045.

[137] State Air Quality Control Plan Vol. III, Appendix III.D.7.7 at p.19, adopted November 19, 2019.

[138] U.S. Environmental Protection Agency, Office of Transportation and Air Quality, Compilation of State, County, and Local Anti-Idling Regulations, EPA420–B–06–004, April 2006, available at *https://www.epa.gov/sites/default/files/documents/CompilationofStateIdlingRegulations.pdf.*

[139] New Hampshire Administrative Code Env-A 1102.2 Idling Limitations for Motor Vehicles (providing an exemption when temperatures are below −10 °F); Code of Village of Northport, § 289–2; City of Philadelphia Air Management Regulations Ch. IX, Section III Idling of Diesel Powered Motor Vehicles.

[140] State of Alaska Department of Transportation and Public Facilities, Vehicle/Equipment Idle Reduction, Policy and Procedure 02.01.110, January 29, 2014, available at *https://dot.alaska.gov/admsvc/pnp/local/dot-jnu_122970.pdf.*

[141] EPA public hearing transcript, held on March 7, 2023, p. 22–23, included in docket for this action.

owning an electric car that functions in −30 °F.[142] Thus, Alaska has not demonstrated that vehicle anti-idling restrictions for light-duty passenger vehicles at schools or commercial establishments are technologically infeasible. The EPA reiterates that Alaska may craft the measure in a manner that accommodates safety concerns.

Regarding Alaska's economic infeasibility demonstration, Alaska estimated that imposing vehicle anti-idling restrictions for light-duty passenger vehicles at commercial establishments would have a cost effectiveness of between $20,420,145 to $10,837,330,902. Alaska derived these calculations in part by incorporating the annual salaries of two Fairbanks North Star Borough employees to patrol parking lots to enforce the program. Alaska estimated the annual salary of a Borough employee at $105,929. Based on Alaska's calculations, these salary costs are the dominant cost of the program.

Incorporating the cost of implementing and enforcing a control strategy is inconsistent with the CAA and $PM_{2.5}$ SIP Requirements Rule. Pursuant to CAA section 110(a)(2)(E), the State is required to provide necessary assurances that the State will have adequate personnel, funding, and authority under State law to carry out its implementation plan. In contrast, economic infeasibility assessments are focused on the costs projected to be borne by the owner and operator of the subject source.[143] Setting aside the cost of Borough employee salaries, the measure appears to yield cost savings from estimated fuel savings. Thus, the EPA finds that Alaska has not demonstrated that vehicle anti-idling restrictions for light-duty passenger vehicles at commercial establishments and schools are economically infeasible.

Regarding constructing HOV lanes, the EPA finds Alaska's technological infeasibility demonstration as supplemented in the State's comments compelling. The EPA agrees this measure is technologically infeasible taking into consideration local conditions, including infrastructure, population, and traffic flow.

Regarding traffic flow improvements, Alaska determined that the cost effectiveness of each of these projects exceeded $1 million per ton of $PM_{2.5}$ removed. Alaska referenced the July 20, 2020 Congestion Mitigation and Air Quality Improvement (CMAQ) Program 2020 Cost-Effectiveness Tables Update produced by the FHWA (CMAQ Tables).[144] According to the CMAQ Tables, traffic flow improvements such as signal synchronization, roundabouts, and intersection improvements ranged in cost $250,000 to $2.9 million which amounted to a cost effectiveness of between $1,136,071 and $13,255,774 per ton of $PM_{2.5}$.[145] Based on this information, the EPA concurs with Alaska's determination that traffic flow improvements are economically infeasible for the Fairbanks $PM_{2.5}$ Nonattainment Area, at this time.

With respect to diesel retrofits, Alaska cited the CMAQ Table as a basis for estimating a median cost effectiveness of $165,130 per ton of $PM_{2.5}$ reduced.[146] The EPA verified these calculations in the CMAQ Table and we concur with Alaska that diesel retrofits are economically infeasible in the Fairbanks $PM_{2.5}$ Nonattainment Area, at this time.

Finally, ADEC cited the CMAQ Tables as evidence that ridesharing programs are economically infeasible. Specifically, according to the CMAQ Tables, ridesharing programs have a median cost effectiveness of $6,010,024 per ton of $PM_{2.5}$ reduced.[147] The EPA verified these calculations in the CMAQ Table and concur with Alaska that ridesharing programs are economically infeasible, at this time.

vi. Alaska's Identification and Adoption of BACT

a. Summary of Proposal

The EPA proposed to partially approve and partially disapprove Alaska's identification and adoption of BACT for stationary sources. The EPA proposed to approve most of Alaska's $PM_{2.5}$ BACT determinations for stationary sources but proposed to disapprove the Fairbanks Serious Plan and Fairbanks 189(d) Plan due to lack of monitoring, recordkeeping, and reporting requirements necessary to ensure the BACT limits are enforceable as a practical matter. The EPA proposed to partially approve and partially disapprove Alaska's $SO_2$ BACT determinations for the stationary sources.[148] Finally, the EPA proposed to approve Alaska's $NH_3$ BACT determinations for all stationary sources. Details on the scope and basis of the EPA's proposed partial approval and partial disapproval are included in section III.C(3)(c) of the Proposal and will not be restated here.

Alaska noted that large stationary sources are a subgroup of emissions sources that have specific requirements in the BACM analysis. Alaska evaluated all stationary sources with potential to emit (PTE) greater than 70 tons per year (tpy) of $PM_{2.5}$ or $PM_{2.5}$ precursors for potential BACT-level controls. According to Alaska, sources with emissions below the 70 tpy threshold only require evaluation for BACM. Alaska states that this emissions threshold is in place to distinguish between the planning requirements for certain sources emitting above and below this threshold and is consistent with an emissions threshold in the 2016 $PM_{2.5}$ SIP Requirements Rule.[149]

The EPA disagrees with this assessment. All emissions sources identified in the emissions inventory are subject to BACM requirements, and the BACT evaluation process is merely a sub-set of BACM. Accordingly, all sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors are subject to BACM and BACT requirements regardless of PTE. There is no PTE threshold below which BACT requirements do not apply. The 70 tons per year PTE threshold cited by Alaska only has relevance in determining whether a new stationary source proposed to be constructed in a nonattainment area meets the definition of a major stationary source pursuant to the nonattainment new source review provisions.[150]

b. Final Rule

Please see the following paragraphs addressing each stationary source regarding the EPA's final determinations.

c. Comments and Responses

For a summary of relevant comments and the EPA's detailed responses on this requirement, see the Response to Comments document included in the docket for this action.[151]

[142] EPA public hearing transcript, held on March 7, 2023, p. 35, included in docket for this action.

[143] 40 CFR 51.1010; 81 FR 58010, August 24, 2016, at p. 58085.

[144] Office of the Natural Environment, Federal Highway Administration, U.S. Department of Transportation, Congestion Mitigation and Air Quality Improvement (CMAQ) Program 2020 Cost-Effectiveness Tables Update, July 20, 2020, available at *https://www.fhwa.dot.gov/ENVIRonment/air_quality/cmaq/reference/cost_effectiveness_tables/fhwahep20039.pdf.*

[145] *Id.* at 63–72.

[146] *Id.* at 75–82.

[147] *Id.* at

[148] On September 25, 2023, Alaska withdrew is $SO_2$ BACT determinations and analysis for major stationary sources in the Fairbanks $PM_{2.5}$ Nonattainment Area.

[149] The EPA notes that Alaska applied this threshold to emissions units at the GVEA Zehnder facility.

[150] 40 CFR 51.165(a)(1)(iv)(A)(*1*); see also 18 AAC 50.040(i).

[151] Response to Comments Regarding Best Available Control Technology Requirements on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour

Continued

vii. Chena Power Plant

a. Summary of Proposal

The Chena Combined Heat and Power Plant (Chena Power Plant) is an existing stationary source owned and operated by Aurora Energy, LLC, which consists of four existing coal-fired boilers: three 76 million British Thermal Units (MMBtu) per hour overfeed traveling grate stoker type boilers and one 269 MMBtu per hour spreader-stoker type boiler that burn coal to produce steam for heating and power (497 MMBtu per hour combined).

The State's BACT determination for the Chena Power Plant evaluated potential controls to reduce $NO_X$, and $PM_{2.5}$ emissions from its four coal-fired boilers.[152] Regarding Alaska's analysis for $PM_{2.5}$ emission controls, Alaska noted that the source currently uses the baghouse to achieve 99.9 percent capture efficiency, but did not definitively determine this control was required as BACT or submit for SIP approval an enforceable requirement to operate the baghouse. Operation of the baghouse to achieve 99.9 percent capture efficiency is likely to be BACT for $PM_{2.5}$ for this source, but the State must revise the SIP to include an enforceable requirement to operate the baghouse to achieve this level of control before we can determine whether BACT requirements are satisfied. Therefore, the EPA proposed to disapprove Alaska's BACT finding for $PM_{2.5}$ for the four coal-fired boilers at the Chena Power Plant.

For $SO_2$ emission controls, the EPA proposed to disapprove Alaska's infeasibility demonstrations on several grounds that are detailed in the Proposal and are not restated here.

We proposed to approve Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

TABLE 5—CHENA POWER PLANT BACT SUMMARY

| Pollutant | Alaska's BACT determination, by source category |
|---|---|
| **Chena Power Plant, Aurora Energy, LLC** | |
| Coal-fired boilers (EUs 4–7)—3 boilers rated 76 MMBtu per hour and 1 boiler rated 269 MMBtu per hour | |
| $PM_{2.5}$ | N/A (Alaska claims installed single full steam baghouse is highest rated control available, but no $PM_{2.5}$ BACT analysis or emission limitation was submitted). |

Source: State Air Quality Control Plan, Vol. II, Chapter III.D.7.7, Table 7.7–10 and Section 7.7.8.2.5.

b. Final Rule

The EPA is finalizing partial disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan because the plans do not identify, adopt, and implement BACT for $PM_{2.5}$ and $SO_2$ for the Chena Power Plant. The EPA is finalizing approval of Alaska's BACT analysis for $NH_3$ emission controls for the Chena Power Plant.

c. Comments and Responses

For a summary of relevant comments and the EPA's detailed responses, see the Response to Comments document for this requirement, included in the docket for this action.[153]

viii. Fort Wainwright

a. Summary of Proposal

Fort Wainwright is an existing U.S. Army installation. Emission units located within the military installation include boilers and generators that are owned and operated by the U.S. Army Garrison Alaska (referred to as FWA). The Central Heating and Power Plant (CHPP), also located within the installation footprint, is owned and operated by Doyon Utilities, LLC (DU), a subsidiary of Doyon, Limited. Doyon, Limited is the regional Alaska Native corporation for Interior Alaska. The two entities, DU and FWA, comprise a single stationary source operating under two permits.

The CHPP is comprised of six spreader-stoker type coal-fired boilers each rated at 230 MMBtu per hour, that burn coal to produce steam for stationary source-wide heating and power. In addition to the CHPP, the source contains additional emission units comprised of small and large emergency engines, fire pumps and generators, diesel-fired boilers, and material handling equipment. Alaska's BACT analysis evaluated potential controls to reduce $NO_X$ and $PM_{2.5}$, emissions from each of these emissions units at the stationary source.[154]

TABLE 6—FORT WAINWRIGHT BACT SUMMARY

| Pollutant | Alaska's BACT determination, by source category |
|---|---|
| **Fort Wainwright, Doyon Utilities** | |
| Coal-fired boilers (EUs 1–6)—each unit rated 230 MMBtu per hour | |
| $PM_{2.5}$ | • Operate and maintain a full stream baghouse at all times the units are in operation;<br>• $PM_{2.5}$ emissions from DU EUs 1 through 6 shall not exceed 0.045 lb/MMBtu over a 3-hour averaging period; and |

$PM_{2.5}$ Serious Area and 189(d) Plan, EPA–R10–OAR–2022–0115.

[152] On September 25, 2023, Alaska withdrew its BACT determination and analysis for $SO_2$ controls and emission limits at the Chena Power Plant. Alaska evaluated potential $NO_X$ controls for each emission unit, but because the EPA is approving Alaska's determination that $NO_X$ emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, Alaska is not required to identify, adopt, or implement BACM or BACT for NOx on any sources in the Fairbanks $PM_{2.5}$ Nonattainment Area. See 40 CFR 51.1006, 51.1010(a)(2)(ii).

[153] Response to Comments Regarding Best Available Control Technology Requirements on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan, EPA–R10–OAR–2022–0115.

[154] On September 25, 2023, Alaska withdrew its BACT determination and analysis for $SO_2$ controls and emission limits at Fort Wainwright. Alaska evaluated potential $NO_X$ controls for each emission unit, but because the EPA is approving Alaska's determination that $NO_X$ emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, Alaska is not required to identify, adopt, or implement BACM or BACT for $NO_X$ on any sources in the Fairbanks $PM_{2.5}$ Nonattainment Area. See 40 CFR 51.1006, 51.1010(a)(2)(ii).

TABLE 6—FORT WAINWRIGHT BACT SUMMARY—Continued

| Pollutant | Alaska's BACT determination, by source category |
|---|---|
| | • Conduct an initial performance test to obtain an emission rate. |
| Diesel-fired oil boilers (27 emissions units) | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions from the diesel-fired boilers shall not exceed 0.012 lb/MMBtu averaged over a 3-hour period, with the exception of the waste fuel boilers which must comply with the State particulate matter emissions standard of 0.05 grains per dry standard cubic foot under 18 AAC 50.055(b)(1);<br>• Limit combined operation of FWA EUs 8, 9, and 10 to 600 hours per year; and<br>• Maintain good combustion practices by following the manufacturer's maintenance procedures at all times of operation. |
| Large diesel-fired engines, fire pumps, and generators (8 emissions units; greater than 500 horsepower) | |
| $PM_{2.5}$ | • Limit combined operation of FWA EUs 11, 12, and 13 to 600 hours per year;<br>• Limit operation of DU EU 8 to 500 hours per year;<br>• $PM_{2.5}$ emissions from DU EU 8, FWA EUs 50, 51, and 53 shall not exceed 0.15 g/hp-hr;<br>• $PM_{2.5}$ emissions from FWA EUs 11 through 13 and 54 shall not exceed 0.32 g/hp-hr;<br>• Limit non-emergency operation of FWA EUs 50, 51, 53, and 54 to no more than 100 hours each per year;<br>• Combust only ULSD; and<br>• Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation. |
| Small emergency engines, fire pumps, and generators (41 emissions units) | |
| $PM_{2.5}$ | • Combust only ULSD;<br>• Limit non-emergency operation of DU EUs 9, 12, 14, 22, 23, 29a, 30, 31a, 32, 33, 34, 35, 36, FWA EUs 26 through 39, and 55 through 65 to no more than 100 hours each per year;<br>• For engines manufactured after the applicability dates of 40 CFR part 60 Subpart IIII, comply with the applicable particulate matter emission standards in 40 CFR part 60 Subpart IIII;<br>• Maintain good combustion practices by following the manufacturer's operating procedures at all times of operation; and<br>• Demonstrate compliance with the numerical BACT emission limits (emission limit of 0.015–1 g/hp-hr (3-hour average) varies by emission unit, listed in the State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–13) by maintaining records of maintenance procedures conducted in accordance with 40 CFR parts 60 and 63, and the EU operating manuals. |
| Material handling sources (6 emissions units; coal prep and ash handling) | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions from the material handling equipment EUs 7a–7c, 51a, and 51b shall be controlled by operating and maintaining fabric filters at all times the units are in operation;<br>• $PM_{2.5}$ emissions from DU EU 7a shall not exceed 0.0025 gr/dscf;<br>• $PM_{2.5}$ emissions from DU EUs 7b, 7c, 51a, and 51 b shall not exceed 0.02 gr/dscf;<br>• $PM_{2.5}$ emissions from DU EU 52 shall not exceed 1.42 tpy. Continuous compliance with the $PM_{2.5}$ emissions limit shall be demonstrated by complying with the fugitive dust control plan identified in the applicable operating permit issued to the source in accordance with 18 AAC 50 and AS 46.14; and<br>• Compliance with the $PM_{2.5}$ emission rates for the material handling units shall be demonstrated by following the fugitive dust control plan and the manufacturer's operating and maintenance procedures at all times of operation. |

Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–11 and Chapter III.D.7.7.8.3.4.

The EPA proposed to disapprove Alaska's BACT determination for $PM_{2.5}$ and $SO_2$ controls for each of the emission sources at the CHPP. Regarding $PM_{2.5}$ controls for the coal-fired boilers and material handling equipment and $PM_{2.5}$ and $SO_2$ controls for the small and large emergency engines, fire pumps, and generators, and diesel-fired boilers, the EPA proposed to find Alaska's BACT determinations are appropriate. However, Alaska did not submit source-specific permits or rules with monitoring, recordkeeping, and reporting (MRR) requirements necessary to make these BACT requirements enforceable as a practical matter. Therefore, the EPA proposed to disapprove the BACT determination for these sources as not meeting the CAA requirement that the SIP include enforceable emission limitations. The EPA stated in the Proposal that Alaska may rectify this issue by submitting the MRR requirements necessary (such as the requirements included in the current operating permit) to ensure the BACT requirements are enforceable as a practical matter.

Regarding $SO_2$ emission controls, the EPA proposed to disapprove Alaska's $SO_2$ BACT determinations and associated infeasibility demonstrations on several grounds that are detailed in the Proposal and are not restated here.

The EPA proposed to approve Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

b. Final Rule

The EPA is finalizing a partial approval and partial disapproval of the Fairbanks Serious Plan BACT provisions for $PM_{2.5}$ controls for each of the emission sources at Fort Wainwright. The EPA is finalizing a partial approval because Alaska's BACT findings for $PM_{2.5}$ (embodied in State Air Quality Control Plan, Vol. II, Chapter III.D.7.7, Tables 7.7–11 and 7.7–13 and Chapter III.D.7.7.8.3.4) are consistent with CAA section 189(b) and 40 CFR 51.1010(a). The EPA is finalizing a partial disapproval because the Fairbanks Serious Plan and Fairbanks 189(d) Plan lack provisions necessary to ensure the BACT determinations for $PM_{2.5}$ are enforceable

as a practical matter as required by CAA Sections 110(a)(2)(A) and 172(c)(7).

On September 25, 2023, Alaska withdrew its $SO_2$ BACT determinations for Fort Wainwright. Therefore, the EPA is finalizing partial disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan because the plans do not identify, adopt, and implement BACT for $SO_2$ at Fort Wainwright. The EPA is finalizing approval of Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

c. Comments and Responses

For a summary of relevant comments and the EPA's detailed responses, see the Response to Comments document for this requirement, included in the docket for this action.[155]

ix. University of Alaska Fairbanks Campus Power Plant

a. Summary of Proposal

The Fairbanks Campus Power Plant is an existing stationary source owned and operated by University of Alaska Fairbanks (UAF) comprised of a circulating fluidized bed (CFB) dual fuel-fired boiler (coal and biomass) rated at 295.6 MMBtu per hour. UAF installed this emission unit in 2016–2018.[156] Other emission units at the source include a 13,266 horsepower (hp) backup diesel generator, 13 diesel-fired boilers, one classroom engine, one diesel engine permitted but not yet installed, and a coal handling system for the new dual-fuel fired boiler.

The State's BACT determination for the Fairbanks Campus Power Plant evaluated potential controls to reduce $NO_X$ and $PM_{2.5}$ emissions from each of the emissions units at the source.[157]

TABLE 7—UNIVERSITY OF ALASKA FAIRBANKS CAMPUS POWER PLANT—BACT SUMMARY

| Pollutant | Alaska's BACT determination, by source category |
|---|---|
| | **University of Alaska Fairbanks** |
| Dual fuel-fired boiler (EU 113)—unit rated at 295 MMBtu per hour; coal and woody biomass fuel; constructed in 2019. | |
| $PM_{2.5}$ | • Operate and maintain fabric filters at all times the unit is in operation;<br>• $PM_{2.5}$ emissions from EU 113 shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period; and<br>• Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures.<br>• Conduct an initial performance test to obtain an emission rate. |
| Mid-sized diesel-fired boilers (EUs 3 and 4)—each unit rated 180 MMBtu per hour | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions from EUs 3 and 4 shall not exceed 0.012 lb/MMBtu averaged over a 3-hour period while firing diesel fuel;<br>• $PM_{2.5}$ emissions from EU 4 shall not exceed 0.0075 lb/MMBtu averaged over a 3-hour period while firing natural gas;<br>• Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures; and<br>• Limit $NO_X$ emissions from EUs 4 and 8 to no more than 40 tons per year combined. |
| Small-sized diesel-fired boilers (EUs 19–21)—each unit rated 6 MMBtu per hour | |
| $PM_{2.5}$ | • Combined boilers operating limit of no more than 19,650 hours per year;<br>• $PM_{2.5}$ emissions from EUs 19–21 shall not exceed 0.012 lb/MMBtu; and<br>• Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation. |
| Large diesel-fired engine (EU 8)—unit rated 13,266 horsepower | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions from EU 8 shall be controlled by operating positive crankcase ventilation and combusting only low ash diesel at all times of operation;<br>• Limit $NO_X$ emissions from EUs 4 and 8 to no more than 40 tons per year combined;<br>• Limit non-emergency operation of EU 8 to no more than 100 hours per year; and<br>• $PM_{2.5}$ emissions from EU 8 shall not exceed 0.32 g/hp-hr averaged over a 3-hour period. |
| Small diesel-fired engines (EUs 23–24, 26–29) | |
| $PM_{2.5}$ | • Limit the operation of EU 27 to no more than 4,380 hours per year;<br>• Limit non-emergency operation of EUs 24, 28, and 29 to no more than 100 hours per year each;<br>• EU 27 shall comply with the Federal emission standards of NSPS Subpart IIII, Tier 3;<br>• Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures; and Demonstrate compliance with the numerical BACT emission limits (emission limit of 0.015–1 g/hp-hr (3-hour average) varies by emission unit, listed in State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–18) by maintaining records of maintenance procedures conducted in accordance with 40 CFR parts 60 and 63, and the EU operating manuals. |

[155] Response to Comments Regarding Best Available Control Technology Requirements on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan, EPA–R10–OAR–2022–0115.

[156] The CFB dual fuel fired boiler replaced two coal-fired boilers installed in 1962.

[157] On September 25, 2023, Alaska withdrew its BACT determination and analysis for $SO_2$ controls and emission limits at the University of Alaska Fairbanks Campus Power Plant. Alaska evaluated potential $NO_X$ controls for each emission unit, but because the EPA is approving Alaska's determination that $NO_X$ emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, Alaska is not required to identify, adopt, or implement BACM or BACT for $NO_X$ on any sources in the Fairbanks $PM_{2.5}$ Nonattainment Area. See 40 CFR 51.1006, 51.1010(a)(2)(ii).

TABLE 7—UNIVERSITY OF ALASKA FAIRBANKS CAMPUS POWER PLANT—BACT SUMMARY—Continued

| Pollutant | Alaska's BACT determination, by source category |
|---|---|
| Pathogenic waste incinerator (EU 9a)—unit rated 533 lb per hour | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions from EU 9A shall be controlled with a multiple chamber design;<br>• Limit the operation of EU 9A to no more than 109 tons of waste combusted per year;<br>• $PM_{2.5}$ emissions from EU 9A shall not exceed 4.67 lb/ton;<br>• Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures; and<br>• Compliance with the proposed operational limit will be demonstrated by recording pounds of waste combusted for the pathogenic waste incinerator. |
| Material handling sources (EUs 105, 107, 109–111, 114, 128–130); coal prep and ash handling | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions from EUs 105, 107, 109 through 111, 114, and 128 through 130 will be controlled by enclosing each EU;<br>• $PM_{2.5}$ emissions from the operation of the material handling units, except EU 111, will be controlled by installing, operating, and maintaining fabric filters and vents;<br>• Initial compliance with the emission rates for the material handling units, except EU 111, will be demonstrated with a performance test to obtain an emission rate; and<br>• Comply with the numerical emission limits (emission limit of 0.003—0.050 gr/dscf and .00005 lb/ton (EU 111) varies by emission unit listed in State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–18—note double citation) |

Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–16 and Chapter III.D.7.7.8.6.

The EPA proposed to disapprove Alaska's BACT provisions for $PM_{2.5}$ and $SO_2$ controls for each of the emission sources at the Fairbanks Campus Power Plant. Regarding $PM_{2.5}$ controls for the dual fuel-fired boiler, backup diesel generator, diesel-fired boilers, and material handling sources; the $PM_{2.5}$ and $SO_2$ controls for the pathogenic waste incinerator; and the $SO_2$ controls for the diesel-fired engines, we proposed to determine that Alaska's BACT determinations are appropriate. However, Alaska did not submit as part of the Fairbanks Serious Plan or Fairbanks 189(d) Plan the emission limits corresponding to Alaska's $SO_2$ or $PM_{2.5}$ BACT determinations for some emission units, Alaska also did not include the MRR requirements necessary to make these BACT requirements enforceable as a practical matter. Therefore, the EPA proposed to disapprove Alaska's $PM_{2.5}$ BACT requirements for these sources as not meeting the CAA requirement that the SIP include enforceable emission limitations.

The EPA noted that Alaska may rectify this issue by submitting the enforceable emission limitation and monitoring, recordkeeping, and reporting requirements necessary to ensure the BACT requirements are enforceable as a practical matter.[158] The EPA also noted that the source-specific SIP requirement for the material handling unit, EU 111, should include the operational requirement that the building doors remain closed at all times that ash loading is occurring. Corresponding MRR conditions should be included to ensure no visible emissions escape the building.

Regarding the EPA's proposed disapproval of Alaska's BACT evaluation and determination for $SO_2$ controls for the dual fuel-fired boiler, the EPA based its proposed disapproval on several grounds that are detailed in the Proposal and are not restated here. The EPA proposed to approve Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

b. Final Rule

The EPA is finalizing disapproval of Alaska's BACT determination for $PM_{2.5}$ controls for the Small Diesel-Fired Engines (EU IDs 23, 26, and 27). The EPA is finalizing a partial approval and partial disapproval of the Fairbanks Serious Plan BACT provisions for $PM_{2.5}$ controls for the remaining emission units. The EPA is finalizing a partial approval because Alaska's BACT determinations embodied in State Air Quality Control Plan, Vol. II, Chapter III.D.7.7, Table 7.7–16 and Chapter III.D.7.7.8.6 are consistent with CAA section 189(b) and 40 CFR 51.1010(a). The EPA is finalizing a partial disapproval because the Fairbanks Serious Plan and Fairbanks 189(d) Plan lack provisions necessary to ensure the BACT determinations are enforceable as a practical matter as required by CAA sections 110(a)(2)(A) and 172(c)(7).[159]

On September 25, 2023, Alaska withdrew its $SO_2$ BACT determinations for the Fairbanks Campus Power Plant. Therefore, the EPA is finalizing partial disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan because the plans do not identify, adopt, and implement BACT for $SO_2$ at the Fairbanks Campus Power Plant. The EPA is finalizing approval of Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

c. Comments and Responses

For a summary of relevant comments and the EPA's detailed responses, see the Response to Comments document for this requirement, included in the docket for this action.[160]

x. Zehnder Facility

a. Summary of Proposal

The Zehnder Facility (Zehnder) is an electric generating facility that combusts distillate fuel in combustion turbines to provide power to the Golden Valley Electric Association (GVEA) grid. The power plant contains two fuel oil-fired simple cycle gas combustion turbines and two diesel-fired generators (electromotive diesels) used for emergency

[158] Alaska did not submit source-specific permits or regulations at part of the Fairbanks Serious Plan or Fairbanks 189(d) Plan. Rather these SIP submissions contain narrative provisions reflecting Alaska's BACT determinations, which list emission limits and summarize monitoring requirements. For certain BACT findings, Alaska in the narrative directs the owner and operator of the source to apply for a permit to implement the State's BACT determinations. Alaska could potentially rectify the enforceability issues with the current SIP submissions by submitting the resulting permits or portions thereof.

[159] *See* supra, note 158.

[160] Response to Comments Regarding Best Available Control Technology Requirements on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan, EPA–R10–OAR–2022–0115.

power and to serve as black start engines for the GVEA generation system. The primary fuel is stored in two 50,000 gallon above ground storage tanks. Turbine startup fuel and electro-motive diesel primary fuel is stored in a 12,000 gallon above ground storage tank.

Alaska's BACT analysis for Zehnder evaluated potential controls to reduce $NO_X$ and $PM_{2.5}$ emissions from its simple cycle gas turbines, large diesel-fired engines, and diesel-fired boilers.[161]

TABLE 8—ZEHNDER FACILITY BACT SUMMARY

| Pollutant | Alaska's BACT determination, by source category |
|---|---|
| **Zehnder facility, Golden Valley Electric Authority** | |
| Fuel oil-fired simple cycle gas turbine (EUs 1 and 2)—each unit rated 268 MMBtu per hour | |
| $PM_{2.5}$ | • Combust only low ash fuel;<br>• $PM_{2.5}$ emissions from EUs 1 & 2 shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period;<br>• Initial compliance with the proposed $PM_{2.5}$ emission limit will be demonstrated by conducting a performance test to obtain an emission rate; and<br>• Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation. |
| Diesel-fired emergency generators (EUs 3 and 4)—each unit rated 28 MMBtu per hour | |
| $PM_{2.5}$ | • Limit non-emergency operation of the large diesel-fired engines to no more than 100 hours per year each;<br>• $PM_{2.5}$ emissions from EUs 3 and 4 shall not exceed 0.32 g/hp-hr over a 3-hour averaging period;<br>• Demonstrate compliance with the numerical BACT emission limit by complying with 40 C.F.R 63 Subpart ZZZZ; and<br>• Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation. |
| Diesel-fired boilers (EUs 10 and 11)—each unit rated 1.7 MMBtu per hour | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period;<br>• Demonstrate compliance with the numerical BACT emission limit by complying with 40 CFR part 63 Subpart JJJJJJ; and<br>• Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation. |

Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–14 and Chapter III.D.7.7.8.4.

The EPA proposed to disapprove Alaska's BACT determination for $PM_{2.5}$ and $SO_2$ controls for each of the emission sources at the Zehnder facility. Regarding $PM_{2.5}$ controls for the two fuel oil-fired simple cycle gas combustion turbines, two diesel-fired generators, and two diesel fired boilers, the EPA found Alaska's BACT determinations were appropriate. However, Alaska did not include the MRR requirements necessary to make these BACT requirements enforceable as a practical matter. Therefore, the EPA proposed to disapprove Alaska's $PM_{2.5}$ BACT requirements for these sources as not meeting the CAA requirement that the SIP include enforceable emission limitations. The EPA noted that Alaska can rectify this issue by submitting the emission limit, monitoring, recordkeeping, and reporting requirements necessary to ensure the BACT requirements are enforceable as a practical matter.[162]

The EPA proposed to disapprove Alaska's BACT determinations and analysis for $SO_2$ controls for each of the emissions units. The basis for EPA's proposed disapproval is included in the Proposal and is not restated here.

The EPA proposed to approve Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

b. Final Rule

The EPA is finalizing partial approval and partial disapproval of the Fairbanks Serious Plan BACT provisions for $PM_{2.5}$ controls for all emission units at Zehnder. The EPA is finalizing a partial approval because Alaska's BACT determinations embodied in State Air Quality Control Plan, Vol. II, Chapter III.D.7.7, Table 7.7–14 and Chapter III.D.7.7.8.4 are consistent with CAA section 189(b) and 40 CFR 51.1010(a). The EPA is finalizing a partial disapproval because the Fairbanks Serious Plan and Fairbanks 189(d) Plan lack provisions necessary to ensure the $PM_{2.5}$ BACT determinations are enforceable as a practical matter as required by CAA sections 110(a)(2)(A) and 172(c)(7).

On September 25, 2023, Alaska withdrew its $SO_2$ BACT determinations for Zehnder. Therefore, the EPA is finalizing partial disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan because the plans do not identify, adopt, and implement BACT for $SO_2$ at Zehnder. The EPA is finalizing approval of Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

c. Comments and Responses

For a summary of relevant comments and the EPA's detailed responses, see the Response to Comments document for this requirement, included in the docket for this action.[163]

[161] On September 25, 2023, Alaska withdrew its BACT determination and analysis for $SO_2$ controls and emission limits at Zehnder. Alaska evaluated potential $NO_X$ controls for each emission unit, but because the EPA is approving Alaska's determination that $NO_X$ emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, Alaska is not required to identify, adopt, or implement BACM or BACT for $NO_X$ on any sources in the Fairbanks $PM_{2.5}$ Nonattainment Area. See 40 CFR 51.1006, 51.1010(a)(2)(ii).

[162] See supra, note 158.

[163] Response to Comments Regarding Best Available Control Technology Requirements on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan, EPA–R10–OAR–2022–0115.

xi. North Pole Power Plant

a. Summary of Proposal

The North Pole Power Plant is an electric generating facility that combusts distillate fuel in combustion turbines to provide power to the GVEA grid. The power plant contains two fuel oil-fired simple cycle gas combustion turbines, two fuel oil-fired combined cycle gas combustion turbines, one fuel oil-fired emergency generator, and two propane-fired boilers. The State's BACT determination for the North Pole Power Plant evaluated potential controls to reduce $NO_X$ and $PM_{2.5}$ emissions from its simple cycle gas turbines, combined cycle gas turbines, large diesel-fired engines, and propane-fired boilers.[164]

TABLE 9—NORTH POLE POWER PLANT BACT SUMMARY

| Pollutant | Alaska's BACT determination, by source category |
|---|---|
| **North Pole Power Plant, Golden Valley Electric Authority** | |
| Fuel oil-fired simple cycle gas turbine (EUs 1 and 2)—each unit rated 672 MMBtu per hour $PM_{2.5}$ potential to emit tons per year | |
| $PM_{2.5}$ | • Combust only low ash fuel;<br>• Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures;<br>• $PM_{2.5}$ emissions from EUs 1 & 2 shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period; and<br>• Initial compliance with the proposed $PM_{2.5}$ emission limit will be demonstrated by conducting a performance test to obtain an emission rate. |
| Fuel oil-fired combined cycle gas turbine (EUs 5 and 6)—each unit rated 455 MMBtu per hour | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions from EUs 5 and 6 shall be limited by complying with the combined annual $NO_X$ limit listed in Operating Permit AQ0110TVP03 Conditions 13 and 12, respectively;<br>• $PM_{2.5}$ emissions from EUs 5 & 6 shall not exceed 0.012 lb/MMBtu over a 3-hour averaging period;<br>• Initial compliance with the proposed $PM_{2.5}$ emission limit will be demonstrated by conducting a performance test to obtain an emission rate; and<br>• Maintain good combustion practices at all times of operation by following the manufacturer's operating and maintenance procedures. |
| Large diesel-fired engine (EU 7)—unit rated 400 kW/619 horsepower | |
| $PM_{2.5}$ | • $PM_{2.5}$ emissions from EU 7 shall be controlled by operating with positive crankcase ventilation;<br>• $PM_{2.5}$ emissions from EU 7 shall be controlled by limiting operation to no more than 52 hours per 12 month rolling period;<br>• $PM_{2.5}$ emissions from EU 7 shall not exceed 0.32 g/hp-hr over a 3-hour averaging period; and<br>• Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation. |
| Propane-fired boiler (EUs 11 and 12)—each unit rated 5 MMBtu per hour | |
| $PM_{2.5}$ | • Burn only propane as fuel in EUs 11 and 12;<br>• $PM_{2.5}$ emissions from EUs 11 and 12 shall not exceed 0.008 lb/MMBtu over a 3-hour averaging period; and<br>• Compliance with the emission limit will be demonstrated with records of maintenance following original equipment manufacturer recommendations for operation and maintenance and periodic measurements of $O_2$ balance.<br>• Maintain good combustion practices by following the manufacturer's operating and maintenance procedures at all times of operation. |

Source: State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–14 and Chapter III.D.7.7.8.5.

The EPA proposed to disapprove Alaska's Fairbanks Serious Plan and Fairbanks 189(d) Plan BACT provisions for $PM_{2.5}$ and $SO_2$ controls for each of the emission sources at the North Pole Power Plant. Regarding $PM_{2.5}$ controls for the two fuel oil-fired simple cycle gas combustion turbines, two fuel oil-fired combined cycle gas combustion turbines, and large diesel-fired engine and $PM_{2.5}$ the EPA proposed to find Alaska's BACT determinations are appropriate. However, Alaska did not submit as part of the Fairbanks Serious Plan or Fairbanks 189(d) Plan the enforceable emission limits and associated MRR requirements needed for determining compliance with all BACT limits or requirements and to make the limits or requirements enforceable as a practical matter. Therefore, the EPA proposed to disapprove Alaska's $PM_{2.5}$ BACT requirements for these sources as not meeting the CAA requirement that the SIP include enforceable emission limitations. The EPA noted that Alaska can rectify this issue by submitting the emission limits and monitoring, recordkeeping, and reporting requirements necessary to ensure the BACT requirements are enforceable as a practical matter.[165]

Regarding $SO_2$ controls, the EPA proposed to find Alaska's BACT determination for $SO_2$ controls at the two propane-fired boilers embodied in State Air Quality were appropriate. However, Alaska also did not submit the MRR requirements needed for determining compliance with this BACT determination. The EPA proposed to disapprove Alaska's $SO_2$ BACT determinations for the simple cycle gas turbines and combined-cycle on several

[164] On September 25, 2023, Alaska withdrew its BACT findings and analysis for $SO_2$ controls and emission limits at the North Pole Power Plant. Alaska evaluated potential $NO_X$ controls for each emission unit, but because the EPA is approving Alaska's determination that $NO_X$ emissions are not significant for $PM_{2.5}$ formation in the Fairbanks nonattainment area, Alaska is not required to identify, adopt, or implement BACM or BACT for $NO_X$ on any sources in the Fairbanks $PM_{2.5}$ Nonattainment Area. See 40 CFR 51.1006, 51.1010(a)(2)(ii).

[165] See supra, note 158.

grounds included in the Proposal and not restated here.

The EPA proposed to approve Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

b. Final Rule

The EPA is finalizing partial approval and partial disapproval of the Fairbanks Serious Plan BACT provisions for $PM_{2.5}$ controls for all emission units at the North Pole Power Plant. The EPA is finalizing a partial approval because Alaska's $PM_{2.5}$ BACT determinations embodied in State Air Quality Control Plan, Vol II, Chapter III.D.7.7, Table 7.7–14 and Chapter III.D.7.7.8.5 are consistent with CAA section 189(b) and 40 CFR 51.1010(a). The EPA is finalizing a partial disapproval because the Fairbanks Serious Plan and Fairbanks 189(d) Plan lack provisions necessary to ensure the BACT determinations are enforceable as a practical matter as required by CAA sections 110(a)(2)(A) and 172(c)(7).

On September 25, 2023, Alaska withdrew its $SO_2$ BACT determinations for the North Pole Power Plant. Therefore, the EPA is finalizing partial disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan because the plans do not identify, adopt, and implement BACT for $SO_2$ at the North Pole Power Plant.

The EPA is finalizing approval of Alaska's analysis that found no $NH_3$-specific emission controls for the sources at this facility.

c. Comments and Responses

For a summary of relevant comments and the EPA's detailed responses, see the Response to Comments document for this requirement, included in the docket for this action.[166]

xii. Alaska's Identification and Adoption of Additional Measures and Demonstration of 5% Reduction in Emissions Pursuant to CAA Section 189(d)

a. Summary of Proposal

The Fairbanks 189(d) Plan included a reevaluation of previously rejected control measures, as noted above. Alaska revised its control strategy in two primary ways as an outgrowth of this reevaluation. First, Alaska added a burn down period of 3 hours for solid fuel heating devices that begins upon the effective date and time of a curtailment announcement. Second, Alaska added specific requirements to document economic hardship as part of a NOASH curtailment program waiver for solid fuel devices.

As part of its reevaluation of control measures, Alaska provided additional information for a number of control measures considered in the BACM analysis. The Fairbanks 189(d) Plan included additional consideration of banning installation of solid fuel devices in new construction, limiting heating oil to ultra-low sulfur diesel, dry wood requirements, emissions controls for small area sources, mobile sources, and most stringent measures.[167] However, Alaska did not reevaluate BACT-level controls for stationary sources. Specifically, there were a number of $SO_2$ control technologies that were evaluated and dismissed under the Fairbanks Serious Plan that were not reconsidered in the Fairbanks 189(d) Plan. Therefore, the EPA proposed to find that Alaska had not sufficiently met the requirement under CAA section 189(d) to reevaluate additional measures that could lead to expeditious attainment.[168]

Regarding the requirement to demonstrate five percent annual reductions, Alaska included in the Fairbanks 189(d) Plan a control strategy analysis that demonstrates annual reductions of $PM_{2.5}$ are greater than five percent through 2024, Alaska's projected attainment year. However, CAA section 189(d) and 40 CFR 51.1010(c)(4) and (5) require that the control strategy contain not just measures required to achieve five percent annual reductions, but all required BACM and additional measures that collectively achieve attainment as expeditiously as practicable.

The EPA stated in the Proposal that Alaska did not adopt and implement all available and required control measures as part of the control strategy for either the Fairbanks Serious Plan or Fairbanks 189(d) Plan. Therefore, Alaska did not necessarily adopt and implement all control measures that collectively achieve attainment as expeditiously as possible. Thus, the EPA proposed to disapprove the control strategy included in the Fairbanks 189(d) Plan as not meeting the full requirements of CAA section 189(d) and 40 CFR 51.1010(c).

b. Final Rule

The EPA did not receive comments on these requirements and is finalizing the disapproval as proposed.

4. Attainment Demonstration and Modeling

i. Summary of Proposal

The EPA proposed to determine that Alaska's attainment demonstration did not fully meet CAA requirements. The EPA noted that correct identification of the most expeditious attainment date requires an evaluation based upon expeditious implementation of the required emission controls. The EPA proposed to disapprove in part the Fairbanks Serious Plan and Fairbanks 189(d) Plan because Alaska did not adopt all control measures necessary to satisfy the BACM and BACT requirements and the requirement to adopt all measures necessary to achieve attainment as expeditiously as practicable. Therefore, the EPA could not assess whether Alaska identified the expeditious attainment date for modeling purposes.

Therefore, the EPA proposed to find that the attainment demonstration in the Fairbanks 189(d) Plan does not meet the requirements of 40 CFR 51.1011(b)(2). The EPA noted that Alaska is currently engaged in a multi-year effort to develop a new Fairbanks modeling platform, as outlined in State Air Quality Control Plan, Appendix III.D.7.8 of the Fairbanks 189(d) Plan. The EPA made clear in the Proposal that it continues to support Alaska's modeling efforts and will review updated modeling and attainment analysis when submitted by the State.

The EPA proposed to approve of the design value Alaska calculated for modeling purposes. For base year modeling purposes, the 64.7 $\mu g/m^3$ four-year average value is appropriate as measured between 2016–2019 at the Hurst Road monitor in the North Pole portion of the Fairbanks Nonattainment Area. The base year emissions inventory Alaska used for its attainment demonstration in the Fairbanks 189(d) Plan represented one of the three years that the EPA used to determine that the area failed to attain by the Serious area attainment date. We stated that this base year is consistent with the requirements of 40 CFR 51.1011(b)(3).

Finally, the EPA proposed to partially disapprove Alaska's control strategy as not meeting the requirements of CAA section 189(b) and 40 CFR 51.1010. Accordingly, the control strategies modeled as part of Alaska's attainment demonstration are not consistent with the control strategies required pursuant

[166] Response to Comments Regarding Best Available Control Technology Requirements on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan, EPA–R10–OAR–2022–0115.

[167] State Air Quality Control Plan, Vol. II, Chapter III.D.7.7.12, adopted November 18, 2020.

[168] See 40 CFR 51.1010(c)(2)(ii). On September 25, 2023, Alaska withdrew its BACT determinations and analysis for $SO_2$ controls and emission limits at all major stationary sources.

to 40 CFR 51.1003 and 40 CFR 51.1010.[169] For these reasons, the EPA proposed to disapprove the attainment demonstration in the Fairbanks 189(d) Plan.

ii. Final Rule

The EPA is finalizing disapproval of the attainment demonstration in the Fairbanks 189(d) Plan as not meeting the requirements of 40 CFR 51.1011(b).

iii. Comments and Responses

*Comment:* Alaska commented that it has been working since 2017 to gather the necessary data and update known modeling deficiencies to satisfy the EPA's modeling requirements. Alaska stated that the Community Multiscale Air Quality (CMAQ) model is an EPA product upon which Alaska relies to satisfy its planning duties under the CAA. Alaska has been coordinating with the EPA and an international consortium of scientists to update the known deficiencies in the model. Alaska stated that after more than three years of interdisciplinary coordination, Alaska is now able to produce an air quality model that will rectify these known deficiencies. However, Alaska asserted that the EPA's intention to finalize this action guarantees that Alaska's work with the air quality model will ''never see the light of day'' because the EPA's final action sets into motion irreversible events including a sanction clock and a Federal Implementation Plan (FIP) clock that will expire before Alaska can complete the necessary modeling work, seek public comment, and formally submit the model as a SIP update to the EPA. Alaska noted that the EPA has made it clear in its proposed action to the Fairbanks 189(d) Plan that the model in its current state is not sufficient to meet the attainment demonstration requirements in the $PM_{2.5}$ SIP Requirements Rule, and the timing of this proposed Consent Decree guarantees the outcome of sanctions and a FIP.

*Response:* The EPA disagrees with Alaska that this final action ensures the imposition of mandatory sanctions or promulgation of a FIP. As discussed in the section IV of this preamble, the CAA provides time for the State to rectify any SIP deficiency before sanctions are triggered and before the EPA is required to promulgate a FIP. As discussed in the Proposal and previously in this preamble, the primary basis for the EPA's disapproval of the Fairbanks 189(d) Plan attainment demonstration is that neither the Fairbanks Serious Plan nor the Fairbanks 189(d) Plan fully meet the CAA control strategy requirements. Alaska may rectify these issues by adopting the necessary control requirements and incorporating the projected emissions reductions into its modeled attainment demonstration.

With respect to improving the modeling platform used to produce the attainment demonstration, the EPA supports Alaska's efforts to develop a new modeling platform that addresses the identified deficiencies and has worked closely with the State to develop a new modeling platform for use in future attainment demonstrations. As detailed in Alaska's Technical Modeling Report [170] and per discussions between EPA Region 10 and ADEC staff, Alaska will begin the next round of attainment demonstration modeling in late summer or fall 2023 using the new modeling platform. Based on the effective date of this final action, sanctions will not be imposed until 2025, leaving ample time for Alaska to develop and submit an updated SIP. The EPA approval of the SIP, which is the event that would stop the sanctions from being implemented, requires that the submitted corrects all identified deficiencies.

*Comment:* Alaska acknowledged that the modeling platform the State used for the Fairbanks 189(d) Plan is outdated in that it does not reflect the current state of scientific knowledge about meteorological and photochemical processes contributing to $PM_{2.5}$ formation in Fairbanks. Additionally, Alaska stated that there is no quantitative performance evaluation for the North Pole (Hurst Road) monitor because there were not speciated $PM_{2.5}$ data for the time period of the model performance evaluation. Alaska noted that the modeling is based on 2008 meteorological episodes that have not been updated or replaced since development of the Moderate Area SIP.

Alaska noted that their Fairbanks modeling is now being updated to include: the use of updated CMAQ and WRF configurations, updated preprocessor modeling, model performance evaluation at both the Hurst Road monitor in North Pole and NCORE monitor in Fairbanks based on $PM_{2.5}$ speciation data from those monitors, and updated emission inventories. Alaska also stated that its updated model performance evaluation is based on a new meteorological episode representative of wintertime conditions in the nonattainment area. Alaska further detailed the ongoing efforts to improve meteorological model performance and update how atmospheric chemistry is coded into the model, with the goal of enhancing the model's capability to simulate secondary sulfate formation.

Alaska stated that with most modeling deficiencies resolved, Alaska can now conduct a major stationary source $SO_2$ sensitivity-based precursor demonstration. Alaska concluded that the EPA should avail itself of the discretion granted by the CAA and carefully consider compelling new information to remedy the problems created by the CMAQ model and delays inherent in working with that model.

*Response:* The EPA remains committed to working with Alaska on improving the modeling platform used for attainment modeling in the nonattainment area. The EPA agrees that model performance improvements have likely resulted in a more robust modeling platform for SIP modeling in the Fairbanks nonattainment area, and the EPA will review the updated attainment demonstration when it submitted by the State as part of a new SIP submission.

The EPA disagrees, however, with Alaska's assertion that updates to the model are or have been a prerequisite to meeting all CAA planning requirements for Serious $PM_{2.5}$ Nonattainment Areas or Serious $PM_{2.5}$ Areas that Fail to Attain. In particular, Alaska was required to identify, adopt, and implement BACM and BACT on all sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors. This requirement is generally independent of attainment needs. Per the CAA and $PM_{2.5}$ SIP Requirements Rule, Alaska was required to adopt these controls before the Serious area attainment date of December 31, 2019.[171] After the Fairbanks $PM_{2.5}$ Nonattainment Area failed to attain by December 31, 2019, Alaska was required to adopt—by December 31, 2020—such additional measures as necessary to achieve attainment as expeditiously as practicable.[172] The updates to the modeling platform that Alaska is completing were not necessary to adopting the controls required by the CAA.

Similarly, to the extent Alaska is making these updates to support a future $SO_2$ precursor demonstration,

[169] 40 CFR 51.1011(b)(4).

[170] Alaska Department of Environmental Conservation (DEC) Division of Air Quality Technical Analysis Modeling Report for phase 1, 2, and 3 (Last Update February 10, 2023), available at *https://dec.alaska.gov/media/25pfupho/121-technical-modeling-report-02-10-2023.pdf.*

[171] CAA section 189(b)(1)(B); 40 CFR 51.1010(a) and 40 CFR 51.1011(b)(5).

[172] CAA section 189(d); 40 CFR 51.1003(c)(2) and 40 CFR 51.1010(c).

this is not a required element of either a Serious plan or plan meeting the requirements of CAA section 189(d). Precursor demonstrations are optional components of these plans.[173] The EPA further notes that it considers the State's overall control strategy and attainment demonstration when determining the approvability of any $PM_{2.5}$ precursor demonstration for a nonattainment area.

Source apportionment studies of the region [174] have shown that sulfate is a substantial contributor to measured $PM_{2.5}$ concentrations in the nonattainment area. The EPA recognizes that modeling deficiencies were the primary reason that Alaska chose not to submit a major stationary source $SO_2$ precursor demonstration as part of the Fairbanks Serious Plan or Fairbanks 189(d) Plan. However, without additional analysis, data, or information submitted as a SIP revision, neither the Fairbanks Serious Plan nor the Fairbanks 189(d) Plan contain support for the hypothesis that major stationary sources of $SO_2$ do not significantly contribute to measured sulfate concentrations in the nonattainment area.

As mentioned by the State, the ALPACA research study may result in peer-reviewed journal articles that provide insights on sulfate sources and chemistry in the nonattainment area. The EPA would weigh these peer-reviewed studies along with model performance, precursor model runs, and other available data and information when evaluating a major stationary source $SO_2$ precursor demonstration submitted as a SIP revision.

5. Reasonable Further Progress

i. Summary of Proposal

In the Proposal, the EPA explained that Alaska withdrew and replaced the State Air Quality Control Plan, Chapter III.D.7.10, as part of submission of the Fairbanks 189(d) Plan. The RFP provisions included in the Fairbanks189(d) Plan are based on Alaska's proposed control strategy designed to meet the requirements of CAA sections 189(b) and 189(d), and 40 CFR 51,1010(a) and (c), based on a projected attainment date of 2024. Therefore, the approvability of the plan with respect to RFP requirements is dependent, in part, on the approvability of the control strategy and attainment demonstration. Specifically, to meet the RFP requirement, the State must include a schedule describing the implementation of control measures required by 40 CFR 51.1010.[175] Moreover, the RFP projected emissions for each milestone year must be based on the anticipated implementation schedule for control measures required by 40 CFR 51.1010.[176] Thus, if the control strategy does not include all required control measures, then the RFP provisions will be deficient.

Similarly, in the Proposal, the EPA stated that the purpose of the RFP requirement is to demonstrate that the attainment plan will achieve annual incremental reductions in emissions between the base year and the attainment date that is as expeditious as practicable.[177] Accordingly, if the attainment year does not reflect the most expeditious year practicable, then the State's evaluation of RFP will not accurately project progress towards the most expeditious attainment year. The EPA proposed to disapprove Alaska's attainment demonstration and to partially disapprove Alaska's control strategy. Therefore, the EPA proposed to disapprove the Fairbanks 189(d) Plan with respect to RFP requirements.

ii. Final Rule

The EPA is finalizing disapproval of the RFP provisions of the Fairbanks 189(d) Plan as proposed.

iii. Comments and Responses

*Comment:* Alaska cross referenced its comments regarding precursor demonstration and attainment demonstrations.

*Response:* The EPA incorporates its responses to Alaska comments regarding the optional $SO_2$ precursor demonstration and attainment demonstrations here. Given the inherent interrelationships between the control strategy, modeled attainment demonstration, and RFP, the deficiencies in the control strategy and attainment demonstration discussed in the Proposal and previously in this preamble render the RFP provisions of the Fairbanks 189(d) plan similarly deficient.[178]

*Comment:* One commenter noted that the EPA only allows the State to take credit for 50 percent compliance, but it should be 90 percent and the State ought to be held to this number.

*Response:* The EPA interprets the comment as referring to the RFP provisions of the Fairbanks 189(d) Plan in which Alaska projected 50% compliance with the solid fuel burning device curtailment program.[179] Specifically, Alaska projected 50% compliance with the curtailment program by 2026.[180] First, the EPA did not impose this number. Rather, Alaska projected this number based on its assessment of the compliance rate and taking into consideration that curtailments do not necessarily apply to all portions of the nonattainment area at the same time.[181] The EPA is not approving the RFP provisions as a whole and expects Alaska to re-evaluate the compliance rate in a subsequent SIP-submission. The EPA will evaluate the projection at that time. The EPA takes no position at this time as to whether the RFP provisions must assume a 90 percent compliance rate for the curtailment program. Any compliance rate must be supported by facts, and reasonable assumptions about future compliance. The EPA does note, however, that better compliance with the curtailment program will translate into significant reductions in direct $PM_{2.5}$ emissions. The EPA, thus, supports all efforts to fully implement and enforce this measure.

6. Quantitative Milestones

i. Summary of Proposal

The EPA noted in the Proposal that, similar to the RFP requirements, Alaska withdrew and resubmitted State Air Quality Control Plan, Vol II, Chapter III.D.7.10 as part of submission of the Fairbanks 189(d) Plan. The quantitative milestones (QMs) are based on Alaska's proposed control strategy and attainment date of 2024. Therefore, the approvability of the QMs is dependent, in part, on the approvability of the control strategy and modeled attainment demonstration. Specifically, if the control strategy does not include all required control measures, then the QMs will necessarily be deficient. The EPA noted that Alaska will need to submit a new attainment demonstration with a new projected attainment date, and by extension, reevaluate whether the QMs for each milestone year are appropriate. The control strategy did not

[173] 40 CFR 51.1006.

[174] Kotchenruther (2016). Source apportionment of $PM_{2.5}$ at multiple Northwest U.S. sites: Assessing regional winter wood smoke impacts from residential wood combustion. *Atmospheric Environment,* 142, 210–219. Available at: *https://doi.org/10.1016/j.atmosenv.2016.07.048.* Ward (2013). The Fairbanks, Alaska $PM_{2.5}$ Source Apportionment Research Study Winters 2005/2006–2012/2013, and Summer 2012. University of Montana-Missoula Center for Environmental Health Sciences. Available at: *https://dec.alaska.gov/air/anpms/communities/fbks-pm2-5-science/.*

[175] 40 CFR 51.1012(a)(1).

[176] 40 CFR 51.1012(a)(2).

[177] 40 CFR 51.1012(a).

[178] *See* 40 CFR 51.1012.

[179] State Air Quality Control Plan Volume II, Chapter III.D.7.10, at p. 9, adopted November 18, 2020.

[180] *Id.*

[181] *Id.* at Vol. III, Appendix III.D.7.10 Fairbanks 5% Plan SIP Control Measures Benefits Spreadsheet.

contain all required control measures. Therefore, the QMs are, by extension, deficient. Thus, the EPA proposed to disapprove the State Air Quality Control Plan, Vol II, Chapter III.D.7.10, with respect to QMs.

ii. Final Rule

The EPA did not receive any comments on this requirement and is finalizing disapproval of the quantitative milestone provisions in the Fairbanks 189(d) Plan as proposed.

7. Contingency Measures

i. Summary of Proposal

In the Proposal, the EPA explained that Alaska provided two specific measures intended to address the contingency measures requirement for purposes of the Fairbanks Serious Plan adopted in 18 AAC 50.077(n). Both of these measures pertain to removal of certain wood fired heating devices upon the triggering of the contingency measure as a result of one of the four regulatory triggering events as required in 40 CFR 51.1014. The first of these measures requires owners of older EPA-certified wood fired heating devices, *i.e.,* those manufactured at least 25 years prior to the triggering event, to remove the device upon sale of the property or by December 31, 2024, whichever is earlier. The second of these measures requires the owners of new EPA-certified wood fired hearing devices, *i.e.,* those manufactured less than 25 years prior to the triggering event, to remove the device prior to reaching 25 years from the date of manufacture.

The EPA did not approve these measures as meeting contingency measure requirements, but did approve them as SIP strengthening on September 24, 2021 (86 FR 52997). By their terms, however, these measures were triggered on October 2, 2020,[182] the effective date of the EPA's finding that the area failed to attain the standard by the outermost serious area attainment date of December 31, 2019.

In the Proposal, the EPA also explained that Alaska provided one additional measure intended to meet the contingency measure requirements for purposes of the Fairbanks 189(d) Plan. This new provision in the Emergency Episode Plan, incorporates a requirement that, if triggered, would lower the air quality woodstove curtailment Stage 2 threshold from 30 $\mu g/m^3$ to 25 $\mu g/m^3$ within the Fairbanks $PM_{2.5}$ Area. The EPA proposed to approve the revisions to the Fairbanks Emergency Episode Plan as SIP strengthening because it would provide for emission reductions even though it would not meet applicable requirements for a contingency measure. The EPA proposed to disapprove the Fairbanks Serious Plan, and Fairbanks 189(d) Plan submissions as not meeting the contingency measure requirements of CAA section 172(c)(9) and 40 CFR 51.1014. The EPA proposed to disapprove the Fairbanks Serious Plan for not meeting the contingency measure requirements because (1) the measures were already triggered and therefore were no longer conditional and prospective, (2) the measures would only achieve 0.01 tons per day reductions in the first year of implementation, and (3) the measures would not achieve emission reductions approximately equal to one-year's-worth of RFP at any time after being triggered.

The EPA proposed to disapprove the contingency measure included in the Fairbanks 189(d) Plan because (1) the measure would not achieve emission reductions approximately equal to one-year's-worth of RFP (2) the measure would not achieve emission reductions of all plan precursors, including $SO_2$ and $NH_3$, and (3) Alaska did not include an adequate reasoned justification for why any additional potential contingency measures were infeasible.[183]

ii. Final Rule

We note that on February 10, 2022, the EPA approved and incorporated 18 AAC 50.030(c) by reference into the SIP, State effective November 7, 2020 (87 FR 7722). The EPA has determined that this current, SIP-approved version of 18 AAC 50.030(c) correctly provides for the four triggering events upon which continency measures should go into effect. In addition, on September 24, 2021 (86 FR 52997), the EPA approved and incorporated by reference the two measures from the Fairbanks Serious Plan related to replacement of wood-fired heating devices in 18 AAC 50.077(n) as SIP strengthening. In this action, the EPA has determined that these provisions do not meet contingency measures requirements because they are already triggered and implemented. In this action, the EPA is approving the new measure from the Fairbanks 189(d) Plan lowering the curtailment Stage 2 threshold from 30 $\mu g/m^3$ to 25 $\mu g/m^3$ as SIP strengthening, but the EPA has determined that this measure alone is insufficient to meet contingency measures requirements. Thus, the EPA is disapproving the Fairbanks Serious Plan and Fairbanks 189(d) Plan with respect to the contingency measures element. The State did not submit adequate control measures to meet the contingency measures requirements of CAA section 172(c)(9) and 40 CFR 51.1014.

iii. Comments and Responses

*Comment:* One comment from Citizens for Clean Air, Alaska Community Action on Toxics, Sierra Club Alaska Chapter supported the EPA's proposed disapproval. The commenter also identified a number of other items that the commenter described as ''potential contingency measures.''

*Response:* The EPA agrees with the commenter that the Fairbanks Serious Plan and Fairbanks 189(d) Plan do not satisfy the contingency measures requirements of the CAA section 172(c)(9) and 40 CFR 51.1014. The EPA agrees that the State should evaluate and adopt other measures to meet the contingency measure requirements, but notes that many of the specific suggestions from the commenter also may not meet applicable statutory and regulatory requirements for contingency measures.

*Comment:* Alaska commented in support of the EPA's proposed approval of revisions to 18 AAC 50.030(c) as meeting the trigger mechanism requirements of 40 CFR 51.1014 and CAA section 172(c)(9).

*Response:* The EPA agrees that 18 AAC 50.030(c) meets the trigger mechanism requirements of 40 CFR 51.1014 and CAA section 172(c)(9) because it provides for the implementation of contingency measures in all four types of triggering events. Although this provision meets this critical requirement for the triggering and implementation of contingency measures for areas in general, and the EPA approved and incorporated the provision by reference

[182] Determination of Failure To Attain by the Attainment Date and Denial of Serious Area Attainment Date Extension Request; AK: Fairbanks North Star Borough 2006 24-Hour Fine Particulate Matter Serious Nonattainment Area, 85 FR 54509, September 2, 2020.

[183] The EPA notes that it indicated in the Proposal that it proposed to approve Volume II, Chapter II.D.7.11 Contingency Measures in the Proposal. This chapter summarizes Alaska's contingency measures and provides Alaska's explanation for why its measures meet CAA requirements. However, the EPA made clear in the Proposal that it proposed to disapprove the Fairbanks Serious Plan and Fairbanks 189(d) Plan as not meeting the contingency measure requirements. The EPA is finalizing the disapproval as proposed. Given that the EPA is disapproving the Fairbanks Serious Plan and Fairbanks 189(d) Plan as not meeting the contingency measure requirements as proposed, the EPA is also disapproving State Air Quality Control Plan Volume II, Chapter II.D.7.11 Contingency Measures. Approving Volume II, Chapter II.D.7.11 Contingency Measures would be inconsistent with the bases for disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan and confusing.

into the SIP on February 10, 2022 (87 FR 7722), we have determined the rule does not suffice to meet other important requirements with respect to the Fairbanks $PM_{2.5}$ Nonattainment Area, such as that the measures actually achieve meaningful emission reductions in the event of a triggering event. Accordingly, approval of the new provision that correctly imposes the correct triggering events does not fully meet the contingency measures element of either the Fairbanks Serious Plan or the Fairbanks 189(d) Plan.

*Comment:* Alaska opposed the EPA's proposed disapproval of its contingency measures. Specifically, Alaska commented that failure of the contingency measure in the Fairbanks 189(d) Plan to achieve approximately one-year's-worth of RFP is not a valid basis for disapproval. The State argued that neither CAA section 172(a)(9) nor the EPA's regulations contain an explicit requirement that contingency measures must achieve approximately one-year's-worth of RFP. Alaska further asserted that the guidance upon which the EPA relied on for the proposed disapproval was not subject to public notice and comment. Alaska also claimed that the EPA's guidance concerning the amount of emission reductions that contingency measures should achieve is ''inconsistent with the plain language'' of the CAA. In support of this contention, the State cited and quoted from the EPA's recent Draft Contingency Measures Guidance as evidence that the EPA's existing guidance is flawed.[184] Finally, Alaska asserted that it has adopted all technically and economically feasible measures as BACM, and that the CAA does not require additional measures as contingency measures.[185]

*Response:* The EPA disagrees with the commenter for a number of reasons. As an initial matter, the EPA notes that Alaska did not specifically address all the of the bases for the EPA's disapprovals for the contingency measures Alaska submitted as part of the Fairbanks Serious Plan and Fairbanks 189(d) Plan, respectively. The EPA disagrees with Alaska that the contingency measures included in either the Fairbanks Serious Plan or Fairbanks 189(d) Plan meet CAA requirements.

With respect to the two contingency measures the State submitted as part of the Fairbanks Serious Plan, the EPA noted several deficiencies—any one of which independently serve as a basis for disapproval. Most notably, the measures have already been triggered because the Fairbanks area failed to attain the NAAQS by the Serious area attainment date, thus are already implemented measures, and therefore are no longer conditional and prospective. The plain language of CAA section 172(c)(9) dictates that contingency measures must be both conditional and prospective, such that emissions reductions will occur only after a triggering event.[186] Courts have already ruled that the EPA may not approve measures that are already implemented, or the emission reductions that result from such already implemented measures, as contingency measures.[187] In addition to this fatal flaw in these two measures, the measures would only achieve 0.01 tons per day reductions of direct $PM_{2.5}$ in the first year of implementation. Specifically, the State did not design the measures to achieve meaningful emissions reductions if triggered prior to the State's target 2024 attainment date, such as a failure to meet RFP. This undercuts the purpose of contingency measures to ensure continued emission reduction progress towards attainment should any of the triggering events listed in 40 CFR 51.1014 occur. Finally, the EPA noted that these two contingency measures at maximum would achieve far less emissions reductions than one-year's-worth of RFP in any year of implementation. Given these deficiencies, Alaska's two contingency measures submitted as part of the Fairbanks Serious Plan (revisions to 18 AAC 50.077(n)) do not satisfy the CAA's contingency measure requirements.

With respect to the one additional contingency measure the State submitted as part of the Fairbanks 189(d) Plan, the EPA also disagrees with Alaska that this measure satisfies CAA contingency measure requirements. Alaska implies that because the statute does not impose an explicit requirement with respect to the amount of emission reductions contingency measures must achieve, the EPA must approve them even if they would result in little or no emission reductions. The EPA's position remains that contingency measures must achieve sufficient emission reductions of direct $PM_{2.5}$ and plan precursors following any of the triggering events. Accordingly, failure to achieve sufficient emissions reductions in general, failure to achieve sufficient emissions reductions of each plan precursor, or failure to achieve emissions reductions following one or more triggering events are valid bases to disapprove a contingency measure.

The statutory purpose of contingency measures is to ensure continued progress towards attainment following a plan failure, such as failure to meet RFP or failure to attain by the attainment date.[188] As the RFP requirement is the statutory basis to measure progress towards attainment,[189] RFP requirements are an appropriate and reasonable barometer for measuring the sufficiency of emissions reductions that the State estimates a contingency measure will achieve. The EPA has historically used RFP for this purpose, and even in more recent draft guidance continues to recommend use of RFP, albeit measured against a different emissions inventory.[190] Moreover, contingency measures should achieve sufficient emission reductions of both direct $PM_{2.5}$ and plan precursors, even if it may be appropriate under some circumstances to provide for inter-pollutant trading for contingency measures purposes.

The EPA first articulated these positions in the April 16, 1992 General Preamble [191] and the August 16, 1994 Addendum.[192] In the context of

[184] *https://www.epa.gov/air-quality-implementation-plans/draft-contingency-measures-guidance.*

[185] Alaska also appears to conflate the BACM requirements with the contingency measure requirements: ''interpreting the OYW guidance as an additional requirement for BACM in Fairbanks is severely detached from the facts on the ground and could not be justified on review.'' Pursuant to CAA section 172(c)(9), 40 CFR 51.1003, and 40 CFR 51.1014 contingency measures are independent from and in addition to all other measures required to be included in the control strategy, including RACM/RACT, BACM/BACT, and MSM. Even when as a state has adopted and implemented all BACM/BACT as required, this is not a valid basis for not adopting contingency measures that meet CAA requirements. To the contrary, section 172(c)(9) imposes the contingency measure requirement as a separate obligation over and above BACM/BACT, RFP, the modeled attainment demonstration and other nonattainment plan requirements.

[186] *Id.*

[187] *Bahr* v. *EPA,* 836 F.3d 1218, 1235–36 (9th Cir. 2016); *Sierra Club* v. *EPA,* 21 F.4th 815, 827–826 (D.C. Cir. 2021).

[188] 59 FR 41998, August 16, 1994, at p. 42015; *Assoc. of Irritated Residents* v. *EPA,* 10 F.4th 937, at pp. 946–947 (9th Cir. 2021).

[189] CAA section 172(c)(2); 40 CFR 51.1012.

[190] U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Policy Division, DRAFT: Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter, March 17, 2023, at pp. 20–22.

[191] 57 FR 13498, April 16, 1992, at pp. 13543–13544 (''The contingency measures to be implemented if an area does not attain the standards on schedule should be a portion of the actual emissions reductions required by the SIP control strategy to bring about attainment. Therefore, the contingency emissions reductions should be approximately equal to the emissions reductions necessary to demonstrate RFP for one year.'').

[192] 59 FR 41998, August 16, 1994, at p. 42015 (''In designing its contingency measures, the State should also take into consideration the potential

implementing the $PM_{2.5}$ NAAQS, contrary to the commenter's assertions, the EPA undertook notice and comment on this approach prior to finalizing the $PM_{2.5}$ SIP Requirements Rule.[193] At that time, commenters raised concerns about the challenges of identifying contingency measures in certain nonattainment areas in which States have already imposed aggressive control measures as part of the control strategy.[194] The EPA acknowledged these challenges, but reiterated its interpretations of the statute that: (1) section 172(c)(9) explicitly requires States to include contingency measures in Moderate area plans, Serious area plans, and 189(d) plans; and that (2) such contingency measures should provide emissions reductions approximately equivalent to one year's-worth of reductions needed for RFP in the area.[195]

Significantly, the EPA also indicated in the $PM_{2.5}$ SIP Requirements Rule that if a State is unable to identify contingency measures that would result in emission reductions equivalent to approximately one year's-worth of RFP, the State may provide a reasoned justification why the smaller amount of emissions reductions is appropriate.[196] Although the EPA indicated that this would only be appropriate in ''the rare event'' that a State is unable to identify any additional measures, the EPA did provide for this possibility if the State provides an adequate demonstration that no other measures are feasible. The EPA reiterated this interpretation in its comment letters on the Fairbanks Serious Plan and Fairbanks 189(d) Plan and recommended that Alaska either adopt additional contingency measures that would achieve more emission reductions or provide an adequate reasoned justification to establish that no other measures were feasible.[197] In the Fairbanks Serious Plan and the Fairbanks 189(d) Plan, the State did not provide an analysis that would provide such an adequate reasoned justification.

On March 17, 2023, the EPA made available ''Draft Guidance on the Preparation of State Implementation Plan Provisions that Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter'' (''Draft Contingency Measure Guidance''). The Draft Contingency Measure Guidance addresses three issues with respect to the contingency measure requirements for ozone and $PM_{2.5}$ nonattainment areas. First, the Draft Contingency Measure Guidance addresses the method that air agencies should use to calculate the amount of emission reductions contingency measures should provide. Second, the Draft Contingency Measure Guidance provides air agencies with specific recommendations about how to develop reasoned justifications for why it cannot identify contingency measures that result in emissions reductions approximately equivalent to RFP. Third, the guidance addresses the time period within which reductions from contingency measures should occur. On March 23, 2023, the EPA published in the **Federal Register** a notice of availability and public comment period on the draft guidance.[198] The comment period closed on April 24, 2023.

Alaska incorrectly asserted that the EPA's issuance of Draft Contingency Measure Guidance suggests that the Agency's longstanding interpretation of CAA section 172(c)(9) with respect to the amount of emission reductions that contingency measures should achieve is inconsistent with the statute. First, the EPA has not yet finalized this revised guidance. The EPA is currently evaluating comments on the Draft Contingency Measure Guidance and determining whether any changes are warranted. Until the EPA finalizes any revised guidance, the EPA continues to evaluate contingency measures based on the approach articulated above. Importantly, nowhere in the Draft Contingency Measure Guidance does the EPA state that its existing approach to contingency measures, including determining the sufficiency of emission reductions, is inconsistent with the CAA. To the contrary, the existing approach is reflective of recent court decisions acknowledging the linkage between RFP and contingency measures.[199] Rather, the draft guidance proffers a different approach that the EPA believes may also satisfy CAA requirements.

Significantly, even in the new draft guidance the EPA continues to recommend that States identify and adopt contingency measures that will achieve approximately one year's worth of progress, but suggests that it may be appropriate to base that calculation on what one year's worth of progress would be in the attainment year, rather than one year based on the base year emissions inventory. In the event a State cannot identify sufficient measures to achieve this amount of emission reductions, the EPA's draft guidance follows the Agency's existing guidance with respect to the potential for States to provide a ''reasoned justification'' that no other measures are feasible to achieve additional emission reductions to meet the contingency measures requirement.

Ultimately, the EPA finds the contingency measure Alaska submitted as part of the Fairbanks 189(d) Plan lacking in several critical ways. First, the contingency measure only provides emissions reductions for direct $PM_{2.5}$ and not all plan precursors. Alaska did not provide any explanation in the SIP submission or the comments on the Proposal for why additional contingency measures specific to plan precursors are not feasible. Second, the contingency measure only provides emission reductions if the triggering event is a failure of the plan to obtain the NAAQS by the attainment date. If the contingency measure is triggered earlier, such as in the event of a failure to meet RFP, Alaska's SIP submission indicates that the contingency measures will achieve substantially less emissions reductions—particularly within the first year of implementation.[200] Finally, the maximum emissions reductions Alaska estimated the contingency measure would achieve, 0.08 $PM_{2.5}$ tons per day, is substantially less than one year's worth of RFP, which is 0.24 $PM_{2.5}$ tons per day. As the EPA suggested in the $PM_{2.5}$ SIP Requirements Rule, Alaska could have attempted to provide a reasoned justification and supporting information to establish that there are

nature and extent of any attainment shortfall for the area. The magnitude of the effectiveness of the measures should be calculated to achieve the appropriate percentage of the actual emission reductions required by the SIP control strategy to bring about attainment. The EPA has recommended that contingency measures provide the emission reductions equivalent to one year's average increment of RFP.'').

[193] Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements, Proposed Rule, 80 FR 15340, March 23, 2015, at pp. 15392, 15417, 15427.

[194] 81 FR 58010, August 24, 2016, at p. 58068.

[195] *Id.* at pp. 58068, 58093 and 58105.

[196] 81 FR 58010, August 24, 2016, at pp. 58067 and 58093.

[197] ''EPA Comments on 2019 DEC Proposed Regulations and SIP—Fairbanks North Star Borough Fine Particulate Matter'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, July 19, 2019.at p. 11; ''EPA Comments on 2020 Department of Environmental Conservation (DEC) Proposed Regulations and SIP Amendments'' Letter from Krishna Viswanathan, Director, EPA Region 10 Air and Radiation Division to Alice Edwards, Director, ADEC Division of Air Quality, October 29, 2020 at p. 7.

[198] Draft Guidance on the Preparation of State Implementation Plan Provisions That Address the Nonattainment Area Contingency Measure Requirements for Ozone and Particulate Matter, 88 FR 17571, March 23, 2023.

[199] *Assoc. of Irritated Residents* v. *EPA,* 10 F.4th 937, at pp. 946–947 (9th Cir. 2021); Draft Contingency Measure Guidance at pp. 17–19.

[200] State Air Quality Control Plan Vol. II, Chapter III.D.7.10, at p. 13, adopted November 18, 2020.

no other feasible measures to achieve additional emission reductions as contingency measures in the Fairbanks area but Alaska did not do so. The EPA maintains that each of these deficiencies form an independent basis to disapprove Alaska's plan as meeting the contingency measure requirements.

Regarding the scarcity of potential contingency measures as a rationale for the low emission reductions, Alaska did not include in its submissions or comments on the Proposal a thorough evaluation of all potential contingency measures, including those measures the State deemed infeasible for BACM/BACT purposes. Another potential source of contingency measures are those measures qualifying as MSM. The EPA previously denied Alaska's request to extend the Serious area attainment date pursuant to CAA section 188(e) because the State failed to adopt MSMs for all sources and source categories.[201] Consideration of control measures that are more stringent than BACM/BACT and MSM is a logical starting point for identification of additional contingency measures. In addition, robust contingency measures are particularly important for the Fairbanks Nonattainment Area given the pervasiveness of the air quality problem.

As part of a subsequent SIP submission to cure the deficiencies with respect to the contingency measures requirements, the EPA encourages Alaska to evaluate all control measures Alaska previously rejected as either technologically or economically infeasible as BACM or BACT or as additional measures necessary for Serious areas that fail to attain and adopt those measures that can satisfy, in whole or in part, the contingency measure requirements. By definition, contingency measures are controls measures that are required over and above what a State is required to adopt to meet other nonattainment plan requirements such as BACM/BACT, RFP, and the modeled attainment demonstration showing expeditious attainment of the NAAQS. Alaska may also identify and adopt new measures it has not previously identified and evaluated as part of prior SIP submissions to satisfy the contingency measure requirements.

Further, as noted in section II.E.(3).(ii) of this preamble and in the EPA's Response to Comments document,[202] the EPA notes the tremendous emission reduction potential of adopting a ULSD control measure for residential and commercial fuel oil combustion (Alaska estimated emission reductions of 669 tons of $SO_2$ per year through ULSD adoption), in an area whose share of $PM_{2.5}$ is increasingly sulfate derived from $SO_2$ sources. Therefore, the EPA encourages Alaska to exercise its authority under CAA section 116 to adopt this measure as part of its control strategy or evaluate this requirement as a contingency measure.

8. Motor Vehicle Emission Budgets for Transportation Conformity

i. Summary of Proposal

The EPA proposed to disapprove the motor vehicle emission budgets submitted as part of the Fairbanks 189(d) Plan. The EPA explained in the Proposal that the Agency evaluated the motor vehicle emissions budgets against the adequacy criteria in 40 CFR 93.118(e)(4) as part of the EPA's review of the approvability of the budgets according to the process in 40 CFR 93.118(f)(2). The EPA noted in the Proposal that the budgets were clearly identified and precisely quantified using MOVES2014b, with appropriate consultation among Federal, State, and local agencies. However, the EPA stated in the Proposal that the budgets must be considered with other emissions sources, consistent with applicable RFP and attainment requirements, and be consistent with and clearly related to the emissions inventory and the control measures in the SIP.[203] Since the budgets must account for other control measures to determine the appropriate motor vehicle budgets, and the control strategy does not include all required control measures, then the budgets will necessarily be deficient. Therefore, the EPA proposed to disapprove the budgets for the Fairbanks $PM_{2.5}$ Nonattainment Area.

ii. Final Rule

The EPA is finalizing disapproval of the motor vehicle budgets for transportation conformity as proposed. The EPA is finalizing its disapproval without a protective finding for the motor vehicle emissions budgets, consistent with 40 CFR 93.120. Specifically, we note that in disapproving a control strategy implementation plan revision, the EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.[204] Based on the discussion in section II.E of this preamble, the Fairbanks Serious Plan and Fairbanks 189(d) Plan do not meet this criteria.

iii. Comments and Responses

*Comment:* The EPA received two comments regarding its proposed disapproval of the motor vehicle emission budgets. One comment from Alaska stated, ''Alaska addressed each individual control measure and provided either additional information to support dismissal or described the actions that Alaska plans to take to resolve the deficiency that the EPA identified.'' Another comment from FAST Planning opposed the proposed disapproval. According to the commenter, FAST Planning interpreted this finding to mean the budgets were disapproved because the EPA proposed to disapprove Alaska's rejection of certain mobile source and transportation control measures all of which have been assessed by Alaska to have limited or no reductions to $PM_{2.5}$ levels. FAST Planning stated that factoring into the budget calculations measures that have limited or no reduction to $PM_{2.5}$ should have little to no effect on the budgets, so this does not seem like a logical reason to disapprove the budget. The comment also includes a graph comparing the Fairbanks Moderate Plan motor vehicle emission budgets to the Fairbanks Serious Plan motor vehicle budgets. According to the comment, the proposed budgets in the Serious Plan are lower than the budgets in the Moderate Plan and the latest test results show actual emissions below the proposed budgets. Furthermore, according to the comment, incorporating the rejected transportation control measures into the analysis will have little to no effect on the budgets.

*Response:* The $PM_{2.5}$ SIP Requirements Rule requires that any attainment plan submitted to the EPA under this section shall establish motor vehicle emissions budgets for the

[201] Determination of Failure To Attain by the Attainment Date and Denial of Serious Area Attainment Date Extension Request; AK: Fairbanks North Star Borough 2006 24-Hour Fine Particulate Matter Serious Nonattainment Area—Final Rule, 85 FR 54509, September 2, 2020; Determination of Failure To Attain by the Attainment Date and Denial of Serious Area Attainment Date Extension Request; AK: Fairbanks North Star Borough 2006 24-Hour Fine Particulate Matter Serious Nonattainment Area—Proposed Rule, 85 FR 29879, May 19, 2020, at p. 29881.

[202] Response to Comments Regarding Best Available Control Measure Requirements for Residential and Commercial Fuel Oil Combustion on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan EPA–R10–OAR–2022–0115.

[203] *See* 40 CFR 93.118(e)(4)(iv through v).

[204] 40 CFR 93.120(a)(3).

projected attainment year for the area, if applicable. The State shall develop such budgets according to the requirements of the transportation conformity rule as they apply to $PM_{2.5}$ nonattainment areas (40 CFR part 93, subpart A).[205] In addition, the transportation conformity regulation at 40 CFR 93.118(e)(4) establishes the minimum criteria that a motor vehicle emission budget must meet in order for the EPA to find the budget adequate. These minimum criteria include: the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission); and the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan. Consistent with the EPA's Transportation Conformity Regulations, the EPA explained in the preamble to the $PM_{2.5}$ SIP Requirements Rule that a motor vehicle emissions budget for the purposes of a Serious area $PM_{2.5}$ attainment plan is that portion of the total allowable emissions within the nonattainment area allocated to on-road sources as defined in the submitted attainment plan. Such motor vehicle emissions budgets would be calculated using the latest planning assumptions and the latest approved motor vehicle emissions model available at the time that the attainment plan is developed.[206]

The EPA's disapproval of the motor vehicle emission budgets submitted as part of the Fairbanks 189(d) Plan is not predicated on the EPA's action on Alaska's BACM determinations for mobile sources generally or rejection of certain transportation control measures as BACM, specifically. While the EPA agrees with FAST Planning that the motor vehicle budgets are reduced from the Fairbanks Moderate Plan to the Fairbanks 189(d), the EPA is still unable to determine whether the budgets are adequate because the EPA is finalizing the disapproval of the attainment demonstration and RFP provisions in the Fairbanks 189(d) Plan. Alaska will need to submit budgets as part of its next SIP revision for the area that are consistent with the revised attainment demonstration and RFP provisions. Additionally, Alaska has not adopted all available BACM and BACT. As a result, the EPA is disapproving the Fairbanks Serious Plan and Fairbanks 189(d) Plan attainment demonstration and reasonable further progress provisions. Therefore, the EPA is limited in determining the adequacy and approvability of the motor vehicle budgets when the EPA cannot yet determine whether all other available control measures are implemented that would lead to expeditious attainment.

*Comment:* One commenter stated that the EPA should issue a transportation conformity protective finding for the regional transportation plan.

*Response:* The transportation conformity regulation at 40 CFR 93.101 defines a protective finding as ''a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.''

Similarly, the regulation at 40 CFR 93.120(a)(3) states: ''In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.''

As noted in section II.E of this preamble, the EPA is finalizing disapproval of portions of the control strategy in the Fairbanks Serious Plan and Fairbanks 189(d) plan as not fully meeting CAA requirements. Therefore, the submitted plans do not contain adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements in CAA sections 189(b) and 189(d). Therefore, the EPA cannot issue a protective finding under 40 CFR 93.120(a)(3).

*Comment:* Several commenters expressed concern with the proposed Manh Choh mine, particularly the increase in heavy-duty vehicle traffic while hauling ore through the nonattainment area.

*Response:* First, the CAA does not mandate a State include control measures in a Serious area plan or 189(d) plan for a proposed mining operation located outside of the Fairbanks nonattainment area or associated ore hauling. Thus, the potential emissions from the Manh Choh mine are outside the scope of this action and not a valid basis to disapprove the Fairbanks Serious Plan or Fairbanks 189(d) Plan.

Second, with respect to the impact of the traffic associated with the mine and its impact on transportation conformity, the EPA has been working with FAST Planning and ADEC to assess these potential impacts and ensure that any increased emissions do not impede expeditious attainment of the $PM_{2.5}$ 24-hour NAAQS. As part of the 2045 Metropolitan Transportation Plan Update, a report provided to FAST Planning concluded that the area continued to meet transportation conformity budgets even with the increased traffic and resulting emissions from the heavy-duty diesel truck activity.[207] We note that as part of the environmental impact assessment of the mining project, the EPA sent a letter to the U.S. Army Corps of Engineers suggesting a number of measures to reduce air quality impacts.[208] Additionally, a technical advisory committee formed by the Alaska Department of Transportation and Public Facilities will analyze the impacts and potential implications of the proposed ore haul operations to roadway infrastructure and safety.[209]

9. Nonattainment New Source Review Requirements

i. Summary of Proposal

A State with a designated nonattainment area is required to have a NNSR permitting program for the construction and operation of new and modified major stationary sources, in accordance with CAA sections 110(a)(2)(C) and 172(c)(5). For purposes of the 2006 24-hour $PM_{2.5}$ NAAQS, the State must also meet the additional requirements of CAA sections 189(b)(3) concerning the definition of a major stationary source, and 189(e) concerning regulated emissions.

CAA section 189(b)(3) requires that in Serious particulate matter nonattainment areas, the NNSR major source threshold is 70 tons per year. The EPA previously approved a revision to

[205] 40 CFR 51.1003(d).

[206] 81 FR 58010, August 24, 2016, at p. 58090.

[207] Vallamsundar and Carlson, Conformity Analysis for the FAST Planning 2045 Metropolitan Transportation Plan Update, Trinity Consultants, section 5.2, March 13, 2023, available in the docket for this action.

[208] Letter from Amy Jensen, EPA Region 10, Regional Wetland Coordinator to Gregory Mazer, U.S. Army Corps of Engineers, Alaska District, August 19, 2022, included in the docket for this action.

[209] Alaska Richardson Steese Highway Corridor Action Plan, available at: *https://storymaps.arcgis.com/stories/98f64a497c834ae18955d5d6b5994ff4.*

the Alaska SIP to meet this requirement (84 FR 45419, August 29, 2019). CAA section 189(e) specifically requires that the control requirements applicable to major stationary sources of direct $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the Administrator determines that such sources of a precursor or precursors do not contribute significantly to $PM_{2.5}$ levels that exceed the NAAQS in the area.[210] The default under CAA section 189(e) is that the State must control emissions of direct $PM_{2.5}$ emissions and the emissions of all four $PM_{2.5}$ precursors, *i.e.,* NOx, VOCs, $SO_2$, and $NH_3$, unless the State has submitted an optional precursor demonstration, and the EPA has approved such demonstration.

As noted in the Proposal and in section II.E.9.i of this preamble, the EPA previously approved a revision to the Alaska SIP to meet this requirement (84 FR 45419, August 29, 2019), thus satisfying the NNSR program element for purposes of the Fairbanks Serious Plan. In that action, the EPA stated that Alaska did not make an optional precursor demonstration for $NO_X$, $SO_2$, VOC or $NH_3$ for purposes of NNSR requirements. Instead, Alaska adopted by reference the 40 tons per year significant emissions rates for $NO_X$, $SO_2$, and VOC set by the EPA, and also established a significant emissions rate of 40 tons per year for $NH_3$ as a precursor for $PM_{2.5}$, consistent with the thresholds established for the other $PM_{2.5}$ precursors. In the Fairbanks 189(d) Plan submission, ADEC certified that the State's NNSR program meets the CAA section 172(c)(5), 189(d), and 189(e) nonattainment area planning requirements. The EPA proposed to approve the existing SIP-approved NNSR program as applicable in the Fairbanks $PM_{2.5}$ Nonattainment Area for purposes of meeting requirements Serious areas that fail to attain under 40 CFR 51.1003(c)(1)(viii).

ii. Final Rule

The EPA did not receive any comments on this plan element and is finalizing approval of the Fairbanks Serious Plan and Fairbanks 189(d) Plan as meeting the NNSR program requirements of CAA sections 172(c)(5), 189(b)(3), 189(d), and 189(e), and 40 CFR 51.1003(b)(1)(viii) and (c)(1)(viii).

10. Additional Comments

*Comment:* One commenter questioned whether the EPA had complied with the Regulatory Flexibility Act prior to proposing action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan. The commenter stated that the RFA required Federal agencies to go through a due process and if the standards that the Federal government have established cannot be attained it allows agencies to adjust them. The commenter further asserted that the EPA was required to address the RFA.

*Response:* The EPA disagrees with the commenter that the EPA was required to prepare a regulatory flexibility analysis pursuant to the RFA prior to proposing or finalizing this action on Alaska's SIP submissions. The RFA, 5 U.S.C. 601–612, generally requires agencies to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute unless an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (SISNOSE). In the notice of proposed rulemaking, the EPA certified that this action will not have a SISNOSE. In particular, the EPA stated that the proposed SIP action, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain State requirements for inclusion in the SIP. The EPA's position with respect to its obligations under the RFA remains unchanged.

*Comment:* One commenter opposed the EPA's proposed determination that the EPA's action on the Fairbanks Serious Plan and Fairbanks 189(d) Plan would not have Tribal implications under Executive Order 13175. The commenter argued that the EPA's action would significantly impact Doyon, Limited and its shareholders. Doyon, Limited is the regional Alaska Native corporation for Interior Alaska formed under the Alaska Native Claims Settlement Act (ANCSA). According to the commenter, Doyon, Limited has 20,400 shareholders, 5,000 of which reside in the Fairbanks area. The commenter also opposed the EPA's proposed disapproval of the BACT determinations for the Fort Wainwright CHPP owned and operated by Doyon Utilities, LLC.

*Response:* Consistent with Executive Order 13175, the EPA consulted with Doyon, Limited on April 17, 2023. The EPA notes that under Executive Order 13175, the EPA consults with Indian Tribes and ANCSA Corporations on a regulatory action that has substantial direct effect on the Indian Tribe or ANCSA corporation and imposes substantial direct compliance costs. The EPA's action here approves in part and disapproves in part the Fairbanks Serious Plan and Fairbanks 189(d) Plan. Accordingly, the EPA's action has no direct effect on Doyon, Limited nor any other Indian Tribe. Nor does the EPA's action impose direct compliance costs. The EPA is not adopting or implementing as part of this action any affirmative regulations applicable to entitles or people in the Fairbanks $PM_{2.5}$ Nonattainment Area. As a result of this action, certain provisions of the Fairbanks Serious Plan and Fairbanks 189(d) Plan are approved into Alaska's SIP. The EPA is disapproving other provisions. In response to the EPA's disapprovals, Alaska may adopt new regulations that may impact Doyon, Limited or its shareholders. The EPA addressed Doyon Utilities, LLC's comments regarding BACT in a Response to Comment document, included in the docket for this action.[211]

*Comment:* One commenter opposed the proposed disapproval on the basis that triggering the mandatory highway sanction is not relevant or appropriate for the Fairbanks $PM_{2.5}$ Nonattainment Area. The Clean Air Act of 1970 was passed to protect public health and welfare at a time when pollution from vehicles was a serious problem in urban areas and included a correlated sanction for withholding Federal highway funding, yet in present time the EPA touts major successes in vehicle pollution control in the U.S. by stating vehicles today are 99 percent cleaner for most tailpipe pollutants than in 1960s and 1970s; thus, the commenter asserts, making the 53-year old sanction no longer relevant. The commenter stated that on-road mobile emissions in the Fairbanks $PM_{2.5}$ Nonattainment Area only comprise 6.8 percent of the area emissions contribution, yet the EPA is threatening to use the 53-year-old sanction to withhold Federal highway funding, which is not correlated nor will contribute to solving the problem.

*Response:* If the EPA finalizes full or partial disapproval of a required SIP submission, such as an attainment plan submission, or a portion thereof, CAA section 179(a) establishes the imposition of mandatory sanctions. If the EPA has not affirmatively determined that the State has corrected the identified deficiencies within 18 months after the effective date of this action, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment

[210] 57 FR 13498, April 16, 1992, at pp. 13539 and 13541–13542.

[211] Response to Comments Regarding Best Available Control Technology Requirements on the Air Plan Partial Approval and Partial Disapproval; AK, Fairbanks North Star Borough; 2006 24-hour $PM_{2.5}$ Serious Area and 189(d) Plan, EPA–R10–OAR–2022–0115.

area. If the EPA has not affirmatively determined that the identified deficiencies have been corrected within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The sanctions will not take effect if, within 18 months after the effective date of this finding, the EPA affirmatively determines that the State has made a complete SIP submittal correcting the deficiencies for which the finding was made.[212]

In this final action, the EPA is disapproving in part the Fairbanks Serious Plan and Fairbanks 189(d) Plan for not meeting the CAA requirements for $PM_{2.5}$ nonattainment areas, specifically attainment projected emissions inventory, attainment demonstration, control strategy (in part), RFP, QM, and contingency measures.[213]

Congress was clear in CAA section 179 that if the EPA made any of the findings, disapprovals, or determinations referred to in CAA section 179(a), sanctions must be imposed. Furthermore, CAA section 179(a)(2) makes clear that disapproval of a SIP submissions for failure to meet *one or more of the elements* required by the CAA triggers mandatory sanctions. Thus, the CAA imposes highway sanctions regardless of whether mobile sources contribute to a particular nonattainment problem and regardless of whether the State fails to control mobile sources in a SIP submission.[214] By extension, the EPA does not have discretion to choose not to impose mandatory sanctions.

## III. Final Action

### *A. Final Approval*

1. In this action, the EPA is finalizing approval of the submitted revisions to the Alaska SIP as meeting the following Serious Plan and CAA section 189(d)[215] required elements for the 2006 24-hour $PM_{2.5}$ NAAQS Fairbanks Nonattainment Area:

i. The 2019 base year emissions inventory (CAA section 172(c)(3);[216] 40 CFR 51.1008(c)(1)) for areas subject to CAA section 189(d).

ii. The State's $PM_{2.5}$ precursor demonstrations for $NO_X$ and VOC emissions (CAA section 189(e);[217] 40 CFR 51.1006(a)).

iii. Partial approval of the control strategy as meeting BACM and BACT requirements under CAA section 189(b)(1)(B)[218] and 40 CFR 51.1010(a) for the solid fuel home heating device source category and residential and commercial fuel oil combustion source category. Additionally, the EPA is finalizing approval as meeting BACM and BACT requirements under CAA section 189(b)(1)(B)[219] and 40 CFR 51.1010(a) for the charbroiler, used oil burner, and mobile source categories (except for rejection of vehicle anti-idling requirements), and specific regulations under 18 AAC 50.075 through 077 (except the requirements for dry wood sellers under 18 AAC 50.076(k)), and Fairbanks Emergency Episode Plan (except the contingency measure portion).

iv. Approval of Nonattainment New Source Review Requirements under CAA sections 172(c)(5), 189(b)(3), 189(d), and 189(e)[220] and 40 CFR 51.165, 40 CFR 51.1003(b)(1)(viii), and 40 CFR 51.1003(c)(1)(viii).

2. The EPA is finalizing partial approval of the Fairbanks Serious Plan and Fairbanks 189(d) plan SIP submissions as meeting applicable control strategy BACM and BACT requirements (CAA section 189(b)(1)(B)[221] and 40 CFR 51.1010(a)) for the following emission sources:[222]

i. Chena Power Plant
   a. Coal-fired boilers ($NH_3$)
ii. Fort Wainwright
   a. Coal-fired boilers ($NH_3$)
   b. Diesel-fired boilers ($NH_3$)
   c. Large diesel-fired engines ($NH_3$)
   d. Small emergency engines ($NH_3$)
   e. Materials handling ($NH_3$)
iii. University of Alaska Fairbanks
   a. Dual fuel-fired boiler ($NH_3$)
   b. Mid-sized diesel-fired boilers ($NH_3$)
   c. Small-sized diesel-fired boilers ($NH_3$)
   d. Large diesel-fired engine ($NH_3$)
   e. Small diesel-fired engines ($NH_3$)
   f. Pathogenic waste incinerator ($NH_3$)
   g. Material handling ($NH_3$)
iv. Zehnder
   a. Oil-fired simple cycle gas turbines ($NH_3$)
   b. Diesel-fired emergency generators ($NH_3$)
   c. Diesel-fired boilers ($NH_3$)
iv. North Pole Power Plant
   a. Oil-fired simple cycle gas turbines ($NH_3$)
   b. Oil-fired combined cycle gas turbines ($NH_3$)
   c. Large diesel-fired engine ($NH_3$)
   d. Propane-fired boiler ($NH_3$)

3. The EPA is finalizing approval of the submitted chapters of the Alaska Air Quality Control Plan for the Fairbanks $PM_{2.5}$ Nonattainment Area, State effective January 8, 2020:

i. Volume II, Chapter III.D.7.01 Executive Summary
ii. Volume II, Chapter III.D.7.02 and Volume III Chapter III.D.7.02 Background and Overview of $PM_{2.5}$ Rule
iii. Volume II, Chapter III.D.7.03 and Volume III Chapter III.D.7.03 Nonattainment Area Boundary and Design Episode Selection
vii. Volume II, Chapter III.D.7.13 and Volume III Chapter III.D.7.13 Assurance of Adequacy
viii. Volume II, Chapter III.D.7.15 Acronyms and Abbreviations

4. The EPA is finalizing approval of the submitted chapters of the Alaska Air Quality Control Plan for the Fairbanks $PM_{2.5}$ Nonattainment Area, State effective December 25, 2020:

i. Volume II, Chapter III.D.7.04 Ambient Air Quality and Trends
ii. Volume II, Chapter III.D.7.05 and Volume III Chapter III.D.7.05 $PM_{2.5}$ Network and Monitoring Program
iii. Volume II, Chapter III.D.7.06 and Volume III Chapter III.D.7.06 Emissions Inventory for purposes of the 2019 base year emissions inventory.
iv. Volume II, Chapter III.D.7.07 and Volume III Chapter III.D.7.07 Control Strategies for purposes of the following emission source categories: solid fuel home heating device, residential and commercial fuel oil combustion, charbroiler, used oil burner, incinerator, $NH_3$ BACT determination for the Aurora

[212] The EPA may also defer or stay, as applicable, the application of sanctions upon issuance of an interim final determination that the revised plan corrects the deficiencies prompting the disapproval. *See* 40 CFR 52.31(d)(2).

[213] 40 CFR 52.31(a); (d).

[214] *See, e.g.,* Statements of Henry A. Waxman, Clean Air Act Amendments of 1990, 136 Cong. Rec. E3699–01, 1990 WL 206989, October 27, 1990, at ES700 (''Cutting off Federal highway funds is an effective, sanction that can-and should in the appropriate situation-be used to ensure compliance with clean air requirements that are unrelated to transportation issues.''). *See also,* CAA section 502(d)(2), 42 U.S.C. 7661a(d)(2) (authorizing the Administrator to apply any of the sanctions in CAA section 179(b) if a state does not submit a Title V operating permit program or the EPA disapproves a state Title V operating permit program). *But see,* S. Rep. 101–228, 1990 USCCAN 3385, December 20, 1989, at 3413.

[215] 42 U.S.C. 7513a(d).

[216] 42 U.S.C. 7502(c)(3).

[217] 42 U.S.C. 7513a(e).

[218] 42 U.S.C. 7513a(b)(1)(B).

[219] *Id.*

[220] 42 U.S.C. 7502(c)(5), 7513a(b)(3), 7513a(d) and 7513a(e).

[221] *Id.*

[222] Note that the EPA inadvertently indicated that it proposed to disapprove the Fairbanks Serious Plan and Fairbanks 189(d) Plan as not meeting BACT requirements for $NH_3$ in Section V of the Proposal. This was in error. The EPA made clear in the preamble to the Proposal that it was proposing to approve Alaska's determinations that no $NH_3$ controls existed for each of the stationary sources listed.

Energy Chena Power Plant, $PM_{2.5}$ and $NH_3$ BACT determination for the Doyon-Fort Wainwright Central Heating and Power Plant; $PM_{2.5}$ and $NH_3$ BACT determination for the University of Alaska Fairbanks Campus Power Plant except for the three small diesel fired engines (EUs 23, 26, and 27); $PM_{2.5}$ and $NH_3$ BACT determinations for Golden Valley Electric Association Zehnder Power Plant; $PM_{2.5}$ and $NH_3$ BACT Determinations for the Golden Valley Electric Association North Pole Power Plant; and Nonattainment New Source Review Requirements.

v. Volume II, Chapter III.D.7.08 Modeling, precursor demonstration for the purposes of $NO_X$ and VOC emissions as it relates to BACM and BACT requirements and control strategy requirements for nonattainment areas subject to CAA section 189(d).

5. The EPA is finalizing a partial approval of Volume II, Chapter III.D.7.12 Emergency Episode Plan, except for the contingency measure portion, as meeting the BACM and BACT requirements for the solid fuel heating device source category.[223]

6. The EPA is finalizing approval and incorporating by reference submitted regulatory changes into the Alaska SIP. Upon this final approval, the Alaska SIP will include:

i. 18 AAC 50.075, except (d)(2), State effective January 8, 2020, (solid fuel-fired heating devices may not exceed 20 percent opacity for more than six minutes in any one hour when an air quality advisory is in effect).

*B. Final Disapproval*

1. The EPA is finalizing disapproval of the submitted revisions to the Alaska SIP as not meeting the following Serious plan and CAA section 189(d)[224] required elements for the 2006 24-hour $PM_{2.5}$ Fairbanks Nonattainment Area:

i. Attainment projected emissions inventory requirements of CAA section 172(c)(1)[225] and 40 CFR 51.1008(c)(2);

ii. Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACT, BACM/BACT, and MSM[226] (if applicable)) under CAA section 189(d) and 40 CFR 51.1010(c).

iii. Attainment demonstration and modeling requirements of CAA sections 188(c)(2) and 189(b)(1)(A) and 40 CFR 51.1003(c) and 51.1011.

iv. Reasonable further progress (RFP) requirements of CAA section 172(c)(2)[227] and 40 CFR 51.1012.

v. Quantitative milestones requirements of CAA section 189(c)[228] and 40 CFR 51.1013.

vi. Contingency measures requirements of CAA section 172(c)(9)[229] and 40 CFR 51.1014 applicable to Serious areas subject to CAA sections 189(b) and 189(d).

vii. Motor vehicle emission budgets requirements under 40 CFR 51.1003(d) and 93.118, without a protective finding under 40 CFR 93.120.

2. The EPA is finalizing disapproval of the submitted chapters of the Alaska Air Quality Control Plan for the Fairbanks $PM_{2.5}$ Nonattainment Area, State effective December 25, 2020:

i. Volume II, Chapter III.D.7.06 and Volume III Chapter III.D.7.06 Emissions Inventory for purposes of the 2024 attainment year emissions inventory.

ii. Volume II, Chapter III.D.7.07 and Volume III Chapter III.D.7.07 Control Strategies for purposes of the wood seller requirements, coal-fired heating devices, coffee roasters, weatherization and energy efficiency, light-duty vehicle anti-idling, $PM_{2.5}$ BACT determinations for the Aurora Chena Power Plant, $PM_{2.5}$ BACT determinations for the University of Alaska Fairbanks Campus Power Plant emission units 23, 26, and 27,

iii. Volume II, Chapter III.D.7.08 Modeling

iv. Volume II, Chapter II.D.7.09 Attainment Demonstration

v. Volume II, Chapter II.D.7.10 Reasonable Further Progress and Quantitative Milestones.

vi. Volume II, Chapter II.D.7.11 Contingency Measures.

vii. Volume II, Chapter II.D.7.14 Conformity and Motor Vehicle Emissions Budgets.

3. The EPA is finalizing limited disapproval of the submitted chapters of the Alaska Air Quality Control Plan for the Fairbanks $PM_{2.5}$ Nonattainment Area, State effective December 25, 2020:

i. Volume II, Chapter II.D.7.12 Emergency Episode Plan. The EPA is finalizing a limited disapproval because the contingency measure components do not fully meet the contingency measure requirements of CAA section 172(c)(9) and 40 CFR 51.1014.[230]

4. The EPA is finalizing partial disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) plan SIP submissions as not meeting applicable control strategy BACM and BACT requirements (CAA section 189(b)(1)(B)[231] and 40 CFR 51.1010(a)) for the following emission source categories:

i. Requirements for wood sellers
ii. Coal-fired heating devices
iii. Coffee roasters
iv. Weatherization and energy efficiency measures
v. Mobile source category (disapproving for lack of vehicle anti-idling requirements).

5. The EPA is finalizing partial disapproval of the Fairbanks Serious Plan and Fairbanks 189(d) plan SIP submissions as not meeting applicable control strategy BACM and BACT requirements (CAA section 189(b)(1)(B)[232] and 40 CFR 51.1010(a)) for the following emission sources:

i. Chena Power Plant
  a. Coal-fired boilers ($PM_{2.5}$; $SO_2$)
ii. Fort Wainwright
  a. Coal-fired boilers ($PM_{2.5}$; $SO_2$)
  b. Diesel-fired boilers ($PM_{2.5}$; $SO_2$)
  c. Large diesel-fired engines ($PM_{2.5}$; $SO_2$)
  d. Small emergency engines ($PM_{2.5}$; $SO_2$)
  e. Materials handling ($PM_{2.5}$)
iii. University of Alaska Fairbanks
  a. Dual fuel-fired boiler ($PM_{2.5}$; $SO_2$)
  b. Mid-sized diesel-fired boilers ($PM_{2.5}$; $SO_2$)
  c. Small-sized diesel-fired boilers ($PM_{2.5}$; $SO_2$)
  d. Large diesel-fired engine ($PM_{2.5}$; $SO_2$)
  e. Small diesel-fired engines ($PM_{2.5}$; $SO_2$)

[223] The EPA finalized a limited approval of the Volume II, Chapter III.D.7.12 Emergency Episode Plan as SIP-strengthening on September 24, 2021. 86 FR 52997, September 24, 2021, at pp. 52997, 53004.

[224] 42 U.S.C. 7513a(d).

[225] 42 U.S.C. 7502(c)(1).

[226] MSM is applicable if the EPA has previously granted an extension of the attainment date under CAA section 188(e) for the nonattainment area and NAAQS at issue. The EPA denied Alaska's request to extend the Serious area attainment date for the Fairbanks Serious Nonattainment Area.

[227] 42 U.S.C. 7502(c)(2).

[228] 42 U.S.C. 7513a(c).

[229] 42 U.S.C. 7502(c)(9).

[230] The EPA finalized a limited approval of the Volume II, Chapter III.D.7.12 Emergency Episode Plan as SIP-strengthening on September 24, 2021. 86 FR 52997, September 24, 2021, at pp. 52997, 53004. The EPA's final limited disapproval does not prevent the State from enforcing the Emergency Episode Plan, including the contingency measure provisions. Nor does the EPA's limited disapproval remove the Emergency Episode Plan, or any portion thereof, from the approved SIP.

[231] 42 U.S.C. 7513a(b)(1)(B).

[232] *Id.*

f. Pathogenic waste incinerator ($PM_{2.5}$; $SO_2$)

g. Material handling ($PM_{2.5}$)

iv. Zehnder

a. Oil-fired simple cycle gas turbines ($PM_{2.5}$; $SO_2$)

b. Diesel-fired emergency generators ($PM_{2.5}$; $SO_2$)

c. Diesel-fired boilers ($PM_{2.5}$; $SO_2$)

v. North Pole Power Plant

a. Oil-fired simple cycle gas turbines ($PM_{2.5}$; $SO_2$)

b. Oil-fired combined cycle gas turbines ($PM_{2.5}$; $SO_2$)

c. Large diesel-fired engine ($PM_{2.5}$; $SO_2$)

d. Propane-fired boiler ($PM_{2.5}$; $SO_2$)

## IV. Consequences of a Disapproval

This section explains the consequences of a disapproval of a required SIP. The Act provides for the imposition of mandatory sanctions and the promulgation of a Federal implementation plan (FIP) if a State fails to obtain EPA approval of a plan revision that corrects the deficiencies identified by the EPA in its disapproval.

### *A. The Act's Provisions for Mandatory Sanctions*

If the EPA finalizes disapproval of a required SIP submission, such as an attainment plan submission, or a portion thereof, CAA section 179(a) establishes the imposition of mandatory sanctions. If the EPA has not affirmatively determined that the State has corrected the identified deficiencies within 18 months after the effective date of this action, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area. If the EPA has not affirmatively determined that the identified deficiencies have been corrected within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31.[233] The sanctions will not take effect if, within 18 months after the effective date of this finding, the EPA affirmatively determines that the State has made a complete SIP submittal correcting the deficiencies for which the finding was made.

### *B. Federal Implementation Plan Provisions That Apply if a State Fails To Submit an Approvable Plan*

Additionally, if the EPA affirmatively determines that the State has made a complete SIP submittal correcting the deficiencies for which this finding was made and takes action to approve the submittal within 2 years of the effective date of this finding, EPA is not required to promulgate a FIP for the affected nonattainment area.[234]

### *C. Ramifications Regarding Transportation Conformity*

One consequence of the EPA action finalizing disapproval of a control strategy SIP submission is a conformity freeze.[235] Final disapproval of the attainment demonstration SIP and the RFP plan without a protective finding results in a conformity freeze beginning on the effective date of the disapproval.[236] The EPA is disapproving in part the Fairbanks Serious Plan and Fairbanks 189(d) Plan, which are attainment plans, because they do not include sufficient emissions reductions to meet attainment and RFP requirements, as discussed above. Therefore, the area is not eligible for a protective finding and a freeze will begin on the effective date of the disapproval.[237] The area's Metropolitan Planning Organization (MPO), FAST Planning, produces the long-range 20-year metropolitan transportation plan and the short-range transportation improvement program. During a conformity freeze, only projects in the first four years of the currently conforming transportation plan and transportation improvement program may be found to conform until another attainment demonstration SIP and RFP plan are submitted and the motor vehicle emissions budgets are found to be adequate or are approved and conformity to the revised attainment demonstration and RFP provisions is determined.[238] If the SIP deficiency is not remedied after 24 months, when highway sanctions are imposed under CAA 179(b)(1) and a conformity lapse occurs. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.[239] However, we do note that exempt projects under 40 CFR 93.126 can proceed during a conformity lapse.[240]

## V. Incorporation by Reference

In this document, the EPA is finalizing its proposal to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is incorporating by reference 18 AAC 50.075, except (d)(2), State effective January 8, 2020 (requiring that solid fuel-fired heating devices may not exceed 20 percent opacity for more than six minutes in any one hour when an air quality advisory is in effect). The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document for more information).

## VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/lawsregulations/laws-and-executive-orders.*

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because the EPA is taking action on Alaska's SIP submissions under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply disapproves portions of certain State plans submitted for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant impact on a substantial number of small entities. This action will not impose any requirements on

[233] On April 1, 1996, the US Department of Transportation published a document in the **Federal Register** describing the criteria to be used to determine which highway projects can be funded or approved during the time that the highway sanction is imposed in an area. (*See* 61 FR 14363, April 1, 1996.)

[234] CAA section 110(c), 42 U.S.C. 7410(c).

[235] Control strategy SIP revisions as defined in the transportation conformity include reasonable further progress plans and attainment demonstrations (40 CFR 93.101).

[236] 40 CFR 93.120(a)(2).

[237] 40 CFR 93.120(a)(3).

[238] 40 CFR 93.120(a)(2).

[239] 40 CFR 93.120(a)(1).

[240] These include certain types of projects, such as safety, mass transit, air quality, and other projects that do not involve or directly lead to construction.

small entities beyond those imposed by State law.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. This action approves in part and disapproves in part portions of certain pre-existing plans under State or local law and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

*E. Executive Order 13132, Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves in part and disapproves in part portions of certain State SIP submissions required by the CAA and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP submissions that the EPA is partially approving and partially disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction, and the EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This action on Alaska's SIP submissions under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply approves in part and disapproves in part portions of the Fairbanks Serious Plan and Fairbanks 189(d) Plan submitted for inclusion into the SIP.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The EPA believes that this action is not subject to requirements of section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*

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

Alaska did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an environmental justice analysis, as is described in the ''Environmental Justice Considerations'' section of the EPA's proposed rulemaking. The analysis was done for the purpose of providing additional context and information about this rule to the public, not as a basis for this action.

*K. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register.* A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a

''major rule'' as defined by 5 U.S.C. 804(2).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 5, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See CAA section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Note:** This document was signed electronically on November 20, 2023. The original, November 20, 2023, digital signature was invalidated and therefore the document was re-signed prior to publication.

Dated: November 28, 2023.

**Daniel Opalski,**

*Acting Regional Administrator, Region 10.*

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

### Subpart C—Alaska

■ 2. Section § 52.70 is amended:
■ a. In table 1 to paragraph (c) by revising the entry ''18 AAC 50.075''; and
■ b. In table 5 to paragraph (e) by adding entries to the end of the table for ''II.III.D.7.01 Executive Summary'', ''II.III.D.7.02 Background and Overview of $PM_{2.5}$ Rule'', ''III.III.D.7.02 Appendix to Background and Overview of $PM_{2.5}$ Rule'', ''II.III.D.7.03 Nonattainment Area Boundary and Design Episode Selection'', ''III.III.D.7.03 Appendix to Nonattainment Area Boundary and Design Episode Selection'', ''II.III.D.7.04 Ambient Air Quality and Trends'', ''II.III.D.7.05 $PM_{2.5}$ Network and Monitoring Program'', ''III.III.D.7.05 Appendix to $PM_{2.5}$ Network and Monitoring Program'', ''II.III.D.7.06 Fairbanks Emissions Inventory Data'', ''III.III.D.7.06 Appendix to Fairbanks Emissions Inventory Data'', ''II.III.D.7.07 Control Strategies'', ''III.III.D.7.07 Appendix to Control Strategies'', and ''II.III.D.7.08 Modeling'', ''III.III.D.7.08 Appendix to Modeling'', ''III.III.D.7.08 Appendix to Modeling'', ''II.III.D.7.13 Assurance of Adequacy'', ''III.III.D.7.13 Appendix to Assurance of Adequacy'', and ''II.III.D.7.15 Acronyms and Abbreviations''.

The revisions and additions read as follows:

**§ 52.70 Identification of plan.**

* * * * *

(c) * * *

TABLE 1 TO PARAGRAPH (c)—EPA-APPROVED ALASKA REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| **Alaska Administrative Code Title 18—Environmental Conservation, Chapter 50—Air Quality Control (18 AAC 50)** | | | | |
| **18 AAC 50—Article 1. Ambient Air Quality Management** | | | | |
| * | * | * | * | * |
| 18 AAC 50.075 | Solid Fuel-Fired Heating Device Visible Emission Standards. | 11/18/2020 | 12/5/2023, [INSERT **FEDERAL REGISTER** CITATION]. | except (d)(2). |
| * | * | * | * | * |

* * * * *

(e) * * *

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * |
| **Recently Approved Plans** | | | | |
| * | * | * | * | * |
| II.III.D.7.01 Executive Summary. | Fairbanks North Star Borough. | 12/13/2019 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| II.III.D.7.02 Background and Overview of $PM_{2.5}$ Rule. | Fairbanks North Star Borough. | 12/13/2019 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanations |
|---|---|---|---|---|
| III.III.D.7.02 Appendix to Background and Overview of $PM_{2.5}$ Rule. | Fairbanks North Star Borough. | 12/13/2019 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| II.III.D.7.03 Nonattainment Area Boundary and Design Episode Selection. | Fairbanks North Star Borough. | 12/13/2019 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| III.III.D.7.03 Appendix to Nonattainment Area Boundary and Design Episode Selection. | Fairbanks North Star Borough. | 12/13/2019 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| II.III.D.7.04 Ambient Air Quality and Trends. | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| II.III.D.7.05 $PM_{2.5}$ Network and Monitoring Program. | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| III.III.D.7.05 Appendix to $PM_{2.5}$ Network and Monitoring Program. | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| II.III.D.7.06 Fairbanks Emissions Inventory Data. | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | Approved for purposes of the Fairbanks 189(d) Plan 2019 base year emissions inventory. |
| III.III.D.7.06 Appendix to Fairbanks Emissions Inventory Data. | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | Approved for purposes of the Fairbanks 189(d) Plan 2019 base year emissions inventory. |
| II.III.D.7.07 Control Strategies. | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | Approved for purposes of the Fairbanks Serious Plan and Fairbanks 189(d) Plan for the following emission source categories: solid fuel home heating device; residential and commercial fuel oil combustion; charbroiler; used oil burner; incinerator; $PM_{2.5}$ and $NH_3$ BACT determination for Doyon-Fort Wainwright Central Heating and Power Plant; $PM_{2.5}$ and $NH_3$ BACT determination for the University of Alaska Fairbanks Campus Power Plant except for the $PM_{2.5}$ BACT determination for the three small diesel fired engines (EUs 23, 26 and 27); $PM_{2.5}$ and $NH_3$ BACT determinations for Golden Valley Electric Association Zehnder Power Plant; $PM_{2.5}$ and $NH_3$ BACT Determinations for the Golden Valley Electric Association North Pole Power Plant; and Nonattainment New Source Review Requirements. |

TABLE 5 TO PARAGRAPH (e)—EPA-APPROVED ALASKA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES—Continued

| Name of SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanations |
|---|---|---|---|---|
| III.III.D.7.07 Appendix to Control Strategies. | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | Approved for purposes of the Fairbanks Serious Plan and Fairbanks 189(d) Plan for the following emission source categories: solid fuel home heating device; residential and commercial fuel oil combustion; charbroiler; used oil burner; incinerator; $PM_{2.5}$ and $NH_3$ BACT determination for Doyon-Fort Wainwright Central Heating and Power Plant; $PM_{2.5}$ and $NH_3$ BACT determination for the University of Alaska Fairbanks Campus Power Plant except for the $PM_{2.5}$ BACT determination for the three small diesel fired engines (EUs 23, 26 and 27); $PM_{2.5}$ and $NH_3$ BACT determinations for Golden Valley Electric Association Zehnder Power Plant; $PM_{2.5}$ and $NH_3$ BACT Determinations for the Golden Valley Electric Association North Pole Power Plant; and Nonattainment New Source Review Requirements. |
| II.III.D.7.08 Modeling ..... | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | Approved for purposes of the Fairbanks 189(d) Plan for the $PM_{2.5}$ precursor demonstration for $NO_X$ and VOC emissions as it relates to BACM/BACT control measure requirements and control strategy requirements for areas subject to CAA section 189(d). |
| III.III.D.7.08 Appendix to Modeling. | Fairbanks North Star Borough. | 12/15/2020 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | Approved for purposes of the Fairbanks 189(d) Plan for the $PM_{2.5}$ precursor demonstration for $NO_X$ and VOC emissions as it relates to BACM/BACT control measure requirements and control strategy requirements for areas subject to CAA section 189(d). |
| II.III.D.7.13 Assurance of Adequacy. | Fairbanks North Star Borough. | 12/13/2019 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| III.III.D.7.13 Appendix to Assurance of Adequacy. | Fairbanks North Star Borough. | 12/13/2019 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |
| II.III.D.7.15 Acronyms and Abbreviations. | Fairbanks North Star Borough. | 12/13/2019 | 12/5/2023, [Insert **FEDERAL REGISTER** citation]. | |

■ 3. Amend § 52.73 by adding paragraph (e)(2) to read as follows:

**§ 52.73 Approval of plans.**

* * * * *

(e) * * *

(2) *Fairbanks.*

(i) The EPA approves the revisions to the Alaska State Implementation Plan submitted on December 13, 2019, and December 15, 2020, as meeting the following requirements applicable to the Fairbanks North Star Borough 2006 24-hour $PM_{2.5}$ Nonattainment Area:

(A) 2019 base year emissions inventory (Clean Air Act section 172(c)(3), 42 U.S.C. 7502(c)(3), 40 CFR 51.1008(c)(1)) for areas subject to Clean Air Act section 189(d), 42 U.S.C. 7513a(d);

(B) $PM_{2.5}$ precursor demonstrations for $NO_X$ and VOC emissions (Clean Air Act section 189(e), 42 U.S.C. 7513a(e); 40 CFR 51.1006(a));

(C) Partial approval of the control strategy as meeting BACM and BACT requirements under Clean Air Act section 189(b)(1)(B), 42 U.S.C. 7513a(b)(1)(B), and 40 CFR 51.1010(a) for ammonia controls for major stationary sources, the solid fuel home heating device source category (except the requirements for dry wood sellers), residential and commercial fuel oil combustion source category; the charbroiler source category, used oil burner source category, and mobile source category (except for rejection of vehicle anti-idling requirements); and

(D) Nonattainment New Source Review Requirements under Clean Air Act sections 172(c)(5), 189(b)(3), 189(d), and 189(e), 42 U.S.C. 7502(c)(5), 7513a(b)(3), 7513a(d), 7513a(e), and 40 CFR 51.165, 40 CFR 51.1003(b)(1)(viii), and 40 CFR 51.1003(c)(1)(viii).

(ii) The EPA disapproves the revisions to the Alaska State Implementation Plan submitted on December 13, 2019, and December 15, 2020, as not meeting the following requirements applicable to the Fairbanks North Star Borough 2006 24-hour $PM_{2.5}$ Nonattainment Area:

(A) Attainment projected emissions inventory requirements of Clean Air Act

section 172(c)(1), 42 U.S.C. 7502(c)(1), and 40 CFR 51.1008(c)(2));

(B) Partial disapproval as not meeting applicable control strategy BACM and BACT requirements (Clean Air Act section 189(b)(1)(B), 42 U.S.C. 7513a(b)(1)(B), and 40 CFR 51.1010(a)) for the following emission source categories: $PM_{2.5}$ and $SO_2$ control analysis for major stationary sources, requirements for wood sellers, coal-fired heating devices, coffee roasters, weatherization and energy efficiency measures, mobile source category (disapproving for lack of vehicle anti-idling requirements);

(C) Additional measures (beyond those already adopted in previous nonattainment plan SIP submissions for the area as RACM/RACT, BACM/BACT, and MSM (if applicable)) under Clean Air Act section 189(d), 42 U.S.C. 7513a(d), and 40 CFR 51.1010(c);

(D) Attainment demonstration and modeling requirements of Clean Air Act sections 188(c)(2) and 189(b)(1)(A), 42 U.S.C. 7513(c)(2) and 7513a(b)(1)(A), and 40 CFR 51.1003(c) and 51.1011;

(E) Reasonable further progress (RFP) requirements of Clean Air Act section 172(c)(2), 42 U.S.C. 7502(c)(2), and 40 CFR 51.1012;

(F) Quantitative milestones requirements of Clean Air Act section 189(c), 42 U.S.C. 7513a(c), and 40 CFR 51.1013;

(G) Contingency measures requirements of Clean Air Act section 172(c)(9), 42 U.S.C. 7502(c)(9), and 40 CFR 51.1014 applicable to Serious areas subject to Clean Air Act sections 189(b) and 189(d), 42 U.S.C. 7513a(b) and 7513a(d); and

(H) Motor vehicle emission budgets requirements under 40 CFR 51.1003(d) and 93.118, without a protective finding under 40 CFR 93.120.

[FR Doc. 2023–26521 Filed 12–4–23; 8:45 am]

**BILLING CODE 6560–50–P**


# FEDERAL REGISTER

Vol. 88 Tuesday,
No. 232 December 5, 2023

Part VI

## The President

Federal Register
Vol. 88, No. 232
Tuesday, December 5, 2023

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 10679 of November 30, 2023**

## National Impaired Driving Prevention Month, 2023

**By the President of the United States of America**

**A Proclamation**

This holiday season, too many American families will have an empty seat at their table after losing a loved one in a drunk or drug-impaired driving accident. More than 10,000 Americans die every year in these preventable crashes. During National Impaired Driving Prevention Month, we call on everyone to help save a life by planning ahead, calling for a ride, only driving when sober, and helping friends and loved ones do the same every time.

Nearly a third of deadly car wrecks in America involve alcohol, and some 26 million people drove under the influence in 2020, endangering themselves, passengers and passersby, and the law enforcement officers who work to keep our roads safe. Just one drink or pill can destroy a cascade of lives.

The best way to reduce the deadly cost of impaired driving is prevention, which starts by raising awareness of its risks and consequences and by working to treat substance misuse in the first place. The National Highway Traffic Safety Administration has invested in media campaigns like ''If You Feel Different, You Drive Different''; ''Drive Sober or Get Pulled Over''; and ''Drive High, Get a DUI,'' but it is on all of us to help spread the word, offer to be a designated driver for others when we can, and call a ride or ask for help when we need it. Meanwhile, for Fiscal Year 2024, my Administration asked the Congress for $26 billion more to fund prevention, treatment, and recovery support services for substance misuse and $20 billion to reduce the supply of illicit substances entering our country to help keep communities safe. Since taking office, my Administration has committed to provide over $169 billion in drug control funding to end the overdose crisis.

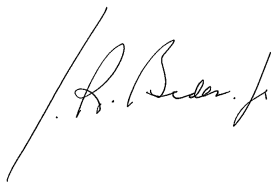
My Administration is advancing new tools that can help prevent driving under the influence and improve road safety. Our Bipartisan Infrastructure Law invests in technologies that can detect and prevent impaired driving, and it requires all new passenger cars to include features like collision warnings and automatic emergency braking, which can help to avoid accidents. The Department of Transportation's National Roadway Safety Strategy works to eliminate traffic deaths and make crashes less destructive. For example, their Safe Streets and Roads for All program offers more than $800 million in grants to help cities, counties, Tribes, and other organizations plan and implement measures improve the safety of our Nation's roadways.

As we head into the holiday seasons, we urge Americans everywhere to do the right thing. If you plan on drinking, arrange a sober ride home in advance; ride-sharing apps have made getting home safely easier than ever. If you have used any substance, never get behind the wheel. If you see someone—a friend, loved one, colleague, or anyone else—putting themselves or others at risk, offer to help. It matters. You could save a life.

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 December 2023 as National Impaired Driving Prevention Month. I urge all Americans to

make responsible decisions and take appropriate measures to prevent impaired driving.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, 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.



[FR Doc. 2023–26840
Filed 12–4–23; 11:15 am]
Billing code 3395–F4–P

# Presidential Documents

**Proclamation 10680 of November 30, 2023**

## World AIDS Day, 2023

**By the President of the United States of America**

**A Proclamation**

On World AIDS Day, my message is simple: Let us finish the fight.

Since recognizing the first World AIDS Day 35 years ago, we have made enormous progress in preventing, detecting, and treating HIV—greatly reducing annual HIV diagnoses and transmission. But despite these advancements, about 39 million people continue to live with HIV, including more than one million people in the United States. Far too often, people living with HIV face discrimination that prevents them from accessing the care they need. So, as we reflect on our progress today, we must also come together to renew our promise to end the HIV/AIDS epidemic.

At home, my Administration has taken historic steps to achieve this goal. During my first year in office, I reestablished the White House Office of National AIDS Policy and launched a new National HIV/AIDS Strategy—a roadmap for using innovative community-driven solutions to end the HIV/AIDS epidemic in the United States by 2030. This year, my Administration also ended the disgraceful practice of banning gay and bisexual men from donating blood. We continue to work with State and community leaders to repeal or reform so-called HIV criminalization laws, which wrongly punish people for exposing others to HIV. I have asked the Congress for $850 million for the Department of Health and Human Services' Ending the HIV Epidemic Initiative to aggressively reduce new HIV cases, fight the stigma that stops many people from getting care, and increase access to pre-exposure prophylaxis (PrEP)—a critical drug that can help prevent the spread of HIV.

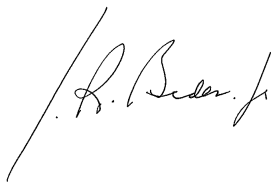
We are also focused on ending HIV/AIDS as a public health threat worldwide by 2030 under the bipartisan President's Emergency Plan for AIDS Relief (PEPFAR). PEPFAR has reduced transmissions, expanded testing, and saved more than 25 million lives in over 50 partner countries over the last two decades. Further, PEPFAR is focusing on forging a future where every HIV infection is prevented, every person has access to treatment, and every generation can live free from the stigma that too often surrounds HIV. My Administration is committed to working with the Congress to pass a clean PEPFAR reauthorization bill to extend this lifesaving bipartisan program for 5 years and end HIV/AIDS by 2030.

We are within striking distance of eliminating HIV-transmission. We have the science. We have the treatments. Most of all, we have each other. On this 35th World AIDS Day—let us honor all the families who have lost a loved one to this disease and all the people currently living with HIV/AIDS. Let us remember the activists, scientists, doctors, and caregivers who have never given up in the fight against the HIV/AIDS epidemic. Let us recommit to finishing this fight—together.

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 December 1, 2023, as World AIDS Day. I urge the Governors of the United States and its Commonwealths and Territories, the appropriate officials of all units of government, and the American people to join the HIV community in activities

to remember those who have lost their lives to AIDS and to provide support, dignity, and compassion to people with HIV.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of November, 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.



[FR Doc. 2023–26841
Filed 12–4–23; 11:15 am]
Billing code 3395–F4–P

# Reader Aids

**Federal Register**

Vol. 88, No. 232

Tuesday, December 5, 2023

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| | |
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## FEDERAL REGISTER PAGES AND DATE, DECEMBER



## CFR PARTS AFFECTED DURING DECEMBER

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.

**3 CFR**

**Proclamations:**
10679 ..... 84679
10680 ..... 84681

**Executive Orders:**
12977 (Superseded and revoked by EO 14111) ..... 83809
14111 ..... 83809

**5 CFR**

2412 ..... 84067

**7 CFR**

**Proposed Rules:**
927 ..... 83870
930 ..... 84075
1005 ..... 84038
1006 ..... 84038
1007 ..... 84038

**10 CFR**

429 ..... 84188
431 ..... 84188

**Proposed Rules:**
Ch. III ..... 84082

**12 CFR**

**Proposed Rules:**
364 ..... 84089

**14 CFR**

39 ..... 83813, 83817, 83820, 83822
71 ..... 84071
97 ..... 84233, 84234

**Proposed Rules:**
71 ..... 83873, 83874, 83875
91 ..... 84090
121 ..... 84090
125 ..... 84090
135 ..... 84090

**17 CFR**

240 ..... 84454

**20 CFR**

**Proposed Rules:**
416 ..... 83877

**22 CFR**

121 ..... 84072

**24 CFR**

**Proposed Rules:**
247 ..... 83877
880 ..... 83877
884 ..... 83877
886 ..... 83877
891 ..... 83877
966 ..... 83877

**26 CFR**

**Proposed Rules:**
1 ..... 84098

**32 CFR**

286 ..... 84236

**33 CFR**

100 ..... 84238
165 ..... 83825, 83827, 84238

**Proposed Rules:**
165 ..... 84249

**38 CFR**

21 ..... 84239

**39 CFR**

**Proposed Rules:**
111 ..... 84251
3050 ..... 83887

**40 CFR**

52 ..... 83828, 84241, 84626
704 ..... 84242

**Proposed Rules:**
63 ..... 83889

**42 CFR**

**Proposed Rules:**
93 ..... 84116
1001 ..... 84116

**47 CFR**

51 ..... 83828
54 ..... 83829, 84406
64 ..... 84406

**49 CFR**

571 ..... 84514

**50 CFR**

300 ..... 83830
622 ..... 83860
648 ..... 84243
660 ..... 83830
679 ..... 84248

**Proposed Rules:**
17 ..... 84252
648 ..... 83893
679 ..... 84278

## 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 November 24, 2023**

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