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Reader Aids

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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.

Rules and Regulations

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

[NRC–2023–0088]

Regulatory Guide: Qualification of Safety-Related Actuators in Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 2 to Regulatory Guide (RG) 1.73, ''Qualification of Safety-Related Actuators in Production and Utilization Facilities.'' This RG describes an approach that is acceptable to the staff of the NRC to meet regulatory requirements for the qualification of safety-related actuators for production and utilization facilities.

DATES: Revision 2 to RG 1.73 is available on January 26, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0088 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0088. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 2 to RG 1.73 and the regulatory analysis may be found in ADAMS under Accession Nos. ML23198A311 and ML23055B028, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Amir Mobasheran, Office of Nuclear Regulatory Research, telephone: 301–415–8112; email: *Amir.Mobasheran@nrc.gov* and Kayleh Hartage, Office of Nuclear Reactor Regulation, telephone: 301–415–3563; email: *Kayleh.Hartage@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision in the NRC's ''Regulatory Guide'' series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The proposed Revision 2 to RG 1.73 was issued with a temporary identification of Draft Regulatory Guide, (DG)–1386 (ADAMS Accession No. ML23055B024). This revision endorses, with exceptions, additions, and clarifications, the methods described in the Institute of Electrical and Electronics Engineers (IEEE) Standard (Std.) 382–2019, ''IEEE Standard for Qualification of Safety-Related Actuators for Nuclear Power Generating Stations and Other Nuclear Facilities.''

II. Additional Information

The NRC published notice of the availability of DG–1386 in the **Federal Register** on May 22, 2023 (88 FR 32693), for a 30-day public comment period. The public comment period closed on June 21, 2023. Public comments on DG–1386 and the staff responses to the public comments are available under ADAMS under Accession No. ML23198A312.

As noted in the **Federal Register** on December 9, 2022 (87 FR 75671), this document is being published in the ''Rules'' section of the **Federal Register** to comply with publication requirements under 1 CFR chapter I.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Issuance of RG 1.73 Revision 2, would not constitute backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests''; affect issue finality of any approval issued under 10 CFR part 52, ''Licenses, Certificates, and Approvals for Nuclear Power Plants''; or constitute forward fitting as defined in MD 8.4, because, as explained in this RG, licensees would not be required to comply with the positions set forth in this RG.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: January 22, 2024.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2024–01540 Filed 1–25–24; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1502; Project Identifier MCAI–2023–00380–T; Amendment 39–22634; AD 2023–25–07]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

Editorial Note: Rule document R1–2023–28853 published on pages 3342–3344 in the issue of Thursday, January 18, 2024. In that publication, on page 3343, in the second column, in the paragraph ''(a) Effective Date,'' on the second line, ''February 16, 2024'' should read ''February 7, 2024''. The rule is republished here corrected and in its entirety.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2023–04–10, which applied to all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. AD 2023–04–10 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2023–04–10, and requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 7, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 7, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of May 12, 2023 (88 FR 20743, April 7, 2023).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1502; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad- Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1502.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 206–231–3226; email *tom.rodriguez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2023–04–10, Amendment 39–22357 (88 FR 20743, April 7, 2023) (AD 2023–04–10). AD 2023–04–10 applied to all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. AD 2023–04–10 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2023–04–10 to address reduced structural integrity of the airplane. AD 2023–04–10 specifies that accomplishing the revision required by that AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, Amendment 39- 16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05) for Dassault Aviation Model MYSTERE–FALCON 900 airplanes only. This AD therefore continues to allow that terminating action.

The NPRM published in the **Federal Register** on July 21, 2023 (88 FR 47086); corrected August 14, 2023 (88 FR 54933). The NPRM was prompted by AD 2023–0046, dated March 2, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0046) (also referred to as the MCAI).

The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to continue to require the actions in AD 2023–04–10 and to require revising the existing maintenance or inspection program, as specified in EASA AD 2023–0046. The FAA is issuing this AD to address reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1502.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2023–0046. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2022–0137, dated July 6, 2022, which the Director of the Federal Register approved for incorporation by reference as of May 12, 2023 (88 FR 20743, April 7, 2023).

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

Costs of Compliance

The FAA estimates that this AD affects 151 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–04–10 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2023–04–10, Amendment 39–22357 (88 FR 20743, April 7, 2023); and

■ b. Adding the following new AD:

2023–25–07 Dassault Aviation: Amendment 39–22634; Docket No. FAA–2023–1502; Project Identifier MCAI–2023–00380–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 7, 2024.

(b) Affected ADs

(1) This AD replaces AD 2023–04–10, Amendment 39–22357 (88 FR 20743, April 7, 2023) (AD 2023–04–10).

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

(c) Applicability

This AD applies to all Dassault Aviation Model MYSTERE–FALCON 900 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

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

(f) Compliance

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

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

This paragraph restates the requirements of paragraph (j) of AD 2023–04–10, with no changes. Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0137, dated July 6, 2022 (EASA AD 2022–0137). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2022–0137, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–04–10, with no changes.

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2022–0137.

(2) Paragraph (3) of EASA AD 2022–0137 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after May 12, 2023 (the effective date of AD 2023–04–10).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0137 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0137, or within 90 days after May 12, 2023 (the effective date of AD 2023–04–10), whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2022–0137.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0137

(i) Retained Restrictions on Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2023–04–10, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0137.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0046, dated March 2, 2023 (EASA AD 2023–0046). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2023–0046

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0046.

(2) Paragraph (3) of EASA AD 2023–0046 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0046 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0046, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2023–0046.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0046.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0046.

(m) Terminating Action for AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model MYSTERE–FALCON 900 airplanes only.

(n) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(o) Additional Information

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

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 7, 2024.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0046, dated March 2, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on May 12, 2023 (88 FR 20743, April 7, 2023).

(i) European Union Aviation Safety Agency (EASA) AD 2022–0137, dated July 6, 2022.

(ii) [Reserved]

(5) For EASA ADs 2023–0046 and 2022–0137, contact EASA, Konrad-Adenauer- Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

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

(7) You may view this material at 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-locationsoremailfr.inspection@nara.gov.*

Issued on December 14, 2023.

Victor Wicklund,

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

[FR Doc. R2–2023–28853 Filed 1–25–24; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31528; Amdt. No. 4097]

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 January 26, 2024. 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 January 26, 2024.

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 January 19, 2024.

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 22 February 2024

Stuttgart, AR, SGT, ILS OR LOC RWY 36, Orig–E
Stuttgart, AR, SGT, RNAV (GPS) RWY 9, Orig–E
Stuttgart, AR, SGT, RNAV (GPS) RWY 18, Amdt 1D
Stuttgart, AR, SGT, RNAV (GPS) RWY 27, Amdt 1E
Boston, MA, BOS, RNAV (GPS) Y RWY 22L, Orig–A
New York, NY, KLGA, RNAV (GPS) Y RWY 13, Orig
New York, NY, LGA, RNAV (GPS) Z RWY 13, Amdt 1D
New York, NY, LGA, RNAV (RNP) Z RWY 22, Orig–E

Effective 21 March 2024

Carlisle, AR, 4M3, RNAV (GPS) RWY 9, Amdt 1C
Carlisle, AR, 4M3, RNAV (GPS) RWY 27, Orig–C
Denver, CO, DEN, RNAV (GPS) Y RWY 16R, Amdt 1
Steamboat Springs, CO, SBS, RNAV (GPS) Z RWY 32, Orig
Bridgeport, CT, KBDR, Takeoff Minimums and Obstacle DP, Amdt 5A
Dunnellon, FL, X35, RNAV (GPS) RWY 5, Orig
Dunnellon, FL, X35, RNAV (GPS) RWY 23, Amdt 1
Audubon, IA, ADU, RNAV (GPS) RWY 32, Amdt 1
Orange, MA, ORE, RNAV (GPS) RWY 32, Orig–C
Lakeview, MI, 13C, RNAV (GPS) RWY 28, Orig–A
ST Cloud, MN, STC, ILS OR LOC RWY 13, Amdt 2
ST Cloud, MN, STC, ILS OR LOC RWY 31, Amdt 4
ST Cloud, MN, STC, RNAV (GPS) RWY 5, Amdt 1
ST Cloud, MN, STC, RNAV (GPS) RWY 13, Amdt 2
ST Cloud, MN, STC, RNAV (GPS) RWY 31, Amdt 2
Ellenville, NY, N89, RNAV (GPS) RWY 22, Orig–B
Ellenville, NY, N89, Takeoff Minimums and Obstacle DP, Amdt 2
Ardmore, OK, ADM, ILS OR LOC RWY 31, Amdt 6
Ardmore, OK, ADM, RNAV (GPS) RWY 31, Amdt 2
Fort Worth, TX, AFW, ILS OR LOC RWY 16L, ILS RWY 16L (CAT II), ILS RWY 16L (CAT III), Amdt 8A
Gilmer, TX, KJXI, RNAV (GPS) RWY 18, Orig–D
Blackstone, VA, BKT, NDB–A, Amdt 13
Blackstone, VA, BKT, RNAV (GPS) RWY 4, Amdt 1B
Blackstone, VA, BKT, RNAV (GPS) RWY 22, Amdt 1B
Greybull, WY, KGEY, NDB RWY 34, Amdt 4, CANCELED

[FR Doc. 2024–01577 Filed 1–25–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31529; Amdt. No. 4098]

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 January 26, 2024. 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 January 26, 2024.

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 January 19, 2024.

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 Instruction 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
2/22/24	UT	Logan	Logan-Cache	3/3200	12/13/23	RNAV (GPS) RWY 35, Amdt 3.
2/22/24	NC	Greensboro	Piedmont Triad Intl	3/5696	1/8/24	RNAV (GPS) RWY 5R, Amdt 2F.
2/22/24	IL	Chicago	Chicago O'Hare Intl	3/9072	1/5/24	RNAV (RNP) Y RWY 27L, Amdt 2.
2/22/24	UT	Logan	Logan-Cache	4/1669	1/9/24	ILS OR LOC/DME RWY 17, Amdt 1.

[FR Doc. 2024–01578 Filed 1–25–24; 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; Correction

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; correcting amendment.

SUMMARY: The DoD is correcting a final rule that published in the **Federal Register** on December 5, 2023. The rule finalized 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 Template for Agency FOIA Regulations noting the decision to participate in FOIA alternative dispute resolution services is voluntary on the part of the requester and DoD.

DATES: This final rule correction is effective January 26, 2024.

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

SUPPLEMENTARY INFORMATION: Subsequent to the publication of the final rule on December 5, 2023 (88 FR 84236–84238), it was discovered that part of an organization's title was missing in one of the amendments to paragraph (a) of § 286.3. This document corrects the Code of Federal Regulations to add the missing part of the organization's title.

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, the Department of Defense amends 32 CFR part 286 by making the following correcting amendment:

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.

§ 286.3 [Amended]

■ 2. In § 286.3, revise paragraph (a) by adding the word ''Defense'' before the words ''Counterintelligence and Security Agency''.

Dated: January 22, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–01491 Filed 1–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2024–OS–0008]

RIN 0790–AL69

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense, Department of Defense (DoD).

ACTION: Direct final rule; amendment.

SUMMARY: The DoD is amending this part to remove the exemption rules associated with four systems of records notices (SORNs) for the DoD Components listed in the **SUPPLEMENTARY INFORMATION** section, under the Privacy Act of 1974, as amended. Elsewhere in today's issue of the **Federal Register**, the DoD is giving concurrent notice of the rescindment of 23 SORNs, including those that correspond to the exemption rules being removed by this rule amendment. This rule is being published as a direct final rule as the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published.

DATES: The rule will be effective on April 5, 2024, unless comments are received that would result in a contrary determination. Comments will be accepted on or before March 26, 2024.

ADDRESSES: You may submit comments, identified by docket number, Regulation Identifier Number (RIN), and title, by any of the following methods.

* *Federal eRulemaking Portal: https://www.regulations.gov.*

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions

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

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, *OSD.DPCLTD@mail.mil,* (703) 571–0070.

SUPPLEMENTARY INFORMATION:

I. Privacy Act Exemption

The DoD is amending this part to remove the exemption rules associated with the following six SORNs established for the DoD Components.

Defense Intelligence Agency (DIA):
- System identifier and name. LDIA 0900, Accounts Receivable, Indebtedness and Claims
- System identifier and name. LDIA 12–0002, Privacy and Civil Liberties Case Management System

Defense Counterintelligence and Security Agency (DCSA) (formerly known as Defense Security Service):
- System identifier and name. V5–04, Counterintelligence Issues Database (CII–DB)

Office of the Inspector General (OIG):
- System identifier and name. CIG–29, Privacy and Civil Liberties Complaint Reporting System

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemption.

When a system of records is no longer required to be collected or maintained, the system of records may be discontinued. The notice for that system of record is rescinded in the **Federal Register**, and the records covered by the rescinded system of records are lawfully transferred or disposed of in accordance with applicable requirements. At the time of rescindment or following rescindment for the system of records notice, Federal agencies will seek to also rescind the associated exemption rules within the Code of Federal Regulations.

II. Direct Final Rulemaking

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule will be withdrawn and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue serious enough to warrant a substantive response had it been submitted in a standard notice-and-comment process. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

The DoD is modifying 32 CFR part 310 by rescinding the following regulation provisions (in their entirety) due to the underlying SORNs being rescinded (most of them concurrently by associated public notice):

- 32 CFR 310.20(b)(7), *System identifier and name.* LDIA 0900, Accounts Receivable, Indebtedness and Claims
- 32 CFR 310.20(b)(9), *System identifier and name.* LDIA 12–0002, Privacy and Civil Liberties Case Management System
- 32 CFR 310.22(b)(5) *System identifier and name.* V5–04, Counterintelligence Issues Database (CII–DB)
- 32 CFR 310.28(c)(8) *System identifier and name.* CIG–29, Privacy and Civil Liberties Complaint Reporting System

Regulatory Analysis

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. It has been determined that this rule is not a significant regulatory action under these executive orders.

Congressional Review Act (5 U.S.C. 804(2))

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).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) 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.

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 has 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. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

Public Law 96–511, ''Paperwork Reduction Act'' [44 U.S.C. Chapter 501 et seq.]

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons

resulting from the collection of information by or for the federal government. The Act requires agencies to obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

Executive Order 13132, ''Federalism''

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

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 proposed rule (and subsequent final 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 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—PROTECTION OF PRIVACY AND ACCESS TO AND AMENDMENT OF INDIVIDUAL RECORDS UNDER THE PRIVACY ACT OF 1974

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

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

§ 310.20 [Amended]

■ 2. Section 310.20 is amended by removing and reserving paragraphs (b)(7) and (b)(9) in their entirety.

§ 310.22 [Amended]

■ 3. Section 310.22 is amended by removing and reserving paragraph (b)(5) in its entirety.

§ 310.28 [Amended]

■ 4. Section 310.28 is amended by removing and reserving paragraph (c)(8) in its entirety.

Dated: January 22, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–01552 Filed 1–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0081]

RIN 1625–AA00

Safety Zone; Atlantic Ocean, Virginia Beach, Virginia

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 1,000-yard radius of the M/V HOS WARLAND, HOS INNOVATOR, and, or HOS MYSTIQUE. Operations are planned to relocate unexploded ordinance (UXO) in the Atlantic Ocean, within 12 miles of the shores of the State Military Reservation, in Virginia Beach, Virginia. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by these operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Virgina or a designated representative.

DATES: This rule is effective and subject to enforcement without actual notice from January 26, 2024 through July 1, 2024. For the purposes of enforcement, actual notice will be used from February 1, 2024, until January 26, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0081in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Ashley Holm, Chief, Waterways Management Division U.S. Coast Guard; 757–617–7986, *Ashley.E.Holm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
pUXO Potential Unexploded Ordinance
ROV Remotely Operated Vehicle
§ Section
TFR Temporary Final Rule
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority in 5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because Coast Guard Sector Virginia was first notified on January 9th, 2024, that operations using a Remotely Operated Vehicle (ROV) to shift UXOs would begin in early February, 2024. There is insufficient time to publish an NPRM, consider any comments submitted in response thereto, and publish the final safety zone by February 1, 2024, when the public will need to have notice of it.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Virginia (COTP) has determined that potential hazards associated with the UXO operations starting on or about February 1, 2024, and continuing into July 2024, will be a safety concern for any persons or property within the operating area discussed below. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone from potential hazards that arise from disturbing UXOs and the use of tethered ROVs for relocation.

IV. Discussion of the Rule

This rule establishes a safety zone on February 1, 2024, through July 1, 2024. The safety zone encompasses all waters within a 1,000-yard radius from the M/V HOS WARLAND, HOS INNOVATOR, and, or HOS MYSTIQUE when

operating within the territorial seas offshore from Virginia State Military Reservation. The safety zone will only be enforced during active UXO relocation operations inside those boundaries. To communicate active disposition activities, project vessels will broadcast ''Securitae'' calls prior to and periodically during the operations. A tethered ROV will be used in conjunction with two small craft and Dynamic Positioning Vessels (DPV) operating within the safety zone. The zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during disposition activities. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and operations requirements of the survey requiring the safety zone. Vessel traffic will be able to safely transit around this safety zone during the operations. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 when the zone is being enforced.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that prohibits entry within a prescribed zone only during the active survey operations which will take place between February and July 2024. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0081 to read as follows:

§ 165.T05–0081 Safety Zone; Atlantic Ocean, Virginia Beach, VA.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, from surface to bottom, encompassed by a radius of 1,000 yards from the actual position of the M/V HOS WARLAND, HOS INNOVATOR, and, or HOS MYSTIQUE while relocation operations are being conducted within the boundaries of a perimeter defined by the following points: 36°49′4.8″ N 75°57′43.2″ W; 36°49′13.9″ N 75°42′39.8″ W; 36°47′11.7″ N, 75°41′50.8″ W and 36°48′28.8″ N 75°57′43.2″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the safety zones. The term also includes the M/V HOS WARLAND, HOS INNOVATOR and HOS MYSTIQUE for the sole purpose of designating and establishing safe transit corridors, to permit passage into or through these safety zones, or to notify vessels and individuals that they have entered a safety zone and are required to depart immediately.

(c) *Regulations.*

(1) Under the general safety zone regulations in subpart C of this part, vessels 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, vessels should contact the M/V HOS WARLAND, HOS INNOVATOR, and, or HOS MYSTIQUE by VHF–FM Channel 16. Those in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This zone will be in effect from February 1, 2024, through July 1, 2024 and enforced during such times as are announced via Broadcast Notice to Mariners between.

Dated: January 22, 2024.

J.A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port Sector Virginia.

[FR Doc. 2024–01548 Filed 1–25–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 5

[Docket ID ED–2008–OM–0011]

RIN 1880–AA84

Availability of Information to the Public; Correction

AGENCY: Office of the Secretary, Department of Education.

ACTION: Final rule; correction.

SUMMARY: On June 14, 2010, the Department of Education (Department) published in the **Federal Register** a final rule amending the Department's Freedom of Information Act (FOIA) regulations. The 2010 final rule implemented amendments made to the FOIA statute and clarified how the Department processes FOIA requests for agency records. We are correcting the administrative exhaustion provisions related to the Appeals of Adverse Determinations section in the FOIA regulations. All other provisions in the FOIA regulations remain the same.

DATES: This correction is effective January 26, 2024.

FOR FURTHER INFORMATION CONTACT: Deborah O. Moore, Department of Education, 400 Maryland Avenue SW, Washington, DC 20202. Telephone: (202) 381–1414. Email: *Deborah.Moore@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: On June 14, 2010, the Department published a final rule amending the Department's FOIA regulations in 34 CFR part 5. Section 5.40(b) (Appeals of Adverse Determinations) erroneously states that a requester's, as opposed to the Department's, failure to comply with the applicable time limits constitutes exhaustion of the requester's administrative remedies for the purposes of initiating judicial action to compel disclosure. This current language is contrary to the Federal statute at 5 U.S.C. 552(a)(6)(C)(i) and case law. *See Citizens for Responsibility and Ethics in Washington* v. *Federal Election Com'n,* 711 F.3d 180, 184 (D.C. Cir. 2013). Additionally, similar language (without the error) is contained in current § 5.40(c)(1) of the FOIA regulations. Therefore, we are correcting the provision to strike the erroneous language from § 5.40(b). Specifically, we are removing the last sentence of § 5.40(b), which reads: ''The requester's failure to comply with time limits set forth in this section constitutes exhaustion of the requester's administrative remedies for the purposes of initiating judicial action to compel disclosure.''

All other information in the 2010 final rule remains the same, except for the provisions that were amended on December 12, 2019 (84 FR 67865).

Waiver of Rulemaking

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

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

There is good cause to waive rulemaking here, because rulemaking is unnecessary. The actions in this document merely correct an inadvertent inconsistency with the FOIA statute and a similar provision in 34 CFR 5.40(c)(1) and are not an exercise of the Department's discretion. Thus, the Secretary has determined that publication of a proposed rule is unnecessary under 5 U.S.C. 553(b)(B).

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal**

Register. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

List of Subjects in 34 CFR Part 5

Administrative practice and procedure, Investigations.

Accordingly, part 5 of title 34 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC

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

Authority: 5 U.S.C. 552, 20 U.S.C. 1221e–3, and 20 U.S.C. 3474.

■ 2. Section 5.40 is amended by revising paragraph (b) to read as follows:

§ 5.40 Appeals of Adverse Determinations.

* * * * *

(b) A requester must submit an appeal within 90 calendar days of the date on the adverse determination letter issued by the Department or, where the requester has received no determination, at any time after the due date for such determination. An appeal must be in writing and must include a detailed statement of all legal and factual bases for the appeal.

* * * * *

Alexis Barrett,

Chief of Staff, Office of the Secretary, Department of Education.

[FR Doc. 2024–01517 Filed 1–25–24; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[CG Docket Nos. 21–402, 02–278, 17–59; FCC 23–107; FR ID 194243]

Targeting and Eliminating Unlawful Text Messages, Implementation of the Telephone Consumer Protection Act of 1991, Advanced Methods To Target and Eliminate Unlawful Robocalls

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) requires terminating mobile wireless providers to block text messages from a particular number following notification from the Commission. The Commission also codifies that the National Do-Not-Call (DNC) Registry's protections extend to text messages. In addition, the Commission encourages mobile wireless providers to make email-to-text, a major source of illegal texts, a service that consumers proactively opt into. The Commission closes the lead generator loophole by requiring comparison shopping websites to get consumer consent one seller at a time, if prior express written consent is required under the Telephone Consumer Protection Act (TCPA), and thus prohibits abuse of consumer consent by such websites. Finally, the Commission adopts a limited waiver to allow providers to use the Reassigned Numbers Database (RND) to determine whether a number that the Commission has ordered to be blocked has been permanently disconnected. Such waiver will help prevent blocking of lawful texts from a new subscriber to the number.

DATES: This rule is effective March 26, 2024, except for the amendment to 47 CFR 64.1200(s), in instruction 5, which is effective July 24, 2024, and the amendment to 47 CFR 64.1200(f)(9), in instruction 6, which is effective January 27, 2025.

FOR FURTHER INFORMATION CONTACT: Jerusha Burnett of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at *jerusha.burnett@fcc.gov,* 202 418–0526, or Mika Savir of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at *mika.savir@fcc.gov* or (202) 418–0384.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order and Waiver Order, in CG Docket Nos. 21–402, 02–278, and 17–59, FCC 23–107, adopted on December 13, 2023, and released on December 18, 2023. The full text of this document is available online at *https://docs.fcc.gov/public/attachments/FCC-23-107A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530.

Congressional Review Act

The Commission sent a copy of document FCC 23–107 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. This document will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding.

Synopsis

1. *Mandatory Blocking Following Commission Notification.* In the Second Report and Order, the Commission adopts, with some modification, proposals in the Further Notice of Proposed Rulemaking (FNPRM), published at 88 FR 21497 on April 11, 2023. First, the Commission specifically requires terminating mobile wireless providers to block all text messages from a particular number following notification from the Commission of illegal texts from that number or numbers. Upon receipt of such notice, a terminating wireless provider must block all texts from the number and respond to the Commission's Enforcement Bureau indicating that the provider has received the notice and is initiating blocking.

2. Under this rule, the Commission's Enforcement Bureau may notify terminating providers of illegal texts from a number or numbers and such Notification of Illegal Texts shall: (1) identify the number(s) used to originate the illegal texts and the date(s) the texts were sent or received; (2) provide the

basis for the Enforcement Bureau's determination that the identified texts are unlawful; (3) cite the statutory or regulatory provisions the illegal texts violate; (4) direct the provider receiving the notice that it must comply with 47 CFR 64.1200(s) of the Commission's rules; and (5) provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Notification of Illegal Texts shall specify a reasonable time frame for the notified provider to respond to the Commission's Enforcement Bureau and initiate blocking. The Enforcement Bureau shall publish the Notification of Illegal Texts in EB Docket No. 23–418.

3. Upon receiving the Notification of Illegal Texts, the provider must promptly begin blocking all texts from the identified number(s) within the timeframe specified in the Notification of Illegal Texts. The provider must respond to the Enforcement Bureau, including a certification that it is blocking texts from the identified number(s). If the provider learns that some or all of the numbers have been reassigned, the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates the number has been reassigned. If the provider subsequently determines that the number has been reassigned, it shall notify the Enforcement Bureau and cease blocking. In such instances, the Commission encourages providers to continue to use other available methods to protect their customers. Providers are not required to monitor whether any numbers subject to this blocking requirement have been reassigned, but are required to notify the Commission and cease blocking if the provider learns of a number reassignment.

4. The Commission does not adopt any additional protections in case of erroneous blocking, but any individual or entity that believes its texts are being blocked under this rule in error can make use of the point of contact required under 47 CFR 64.1200(r) of the Commission's rules. If the provider determines that blocking should cease, it should notify the Enforcement Bureau of that finding, including any evidence that supports that finding.

5. This rule shall be effective 180 days after publication of this Second Report and Order in the **Federal Register**, to allow providers additional time to ensure that they are prepared to comply. However, the Commission states that this rule does not require Paperwork Reduction Act (PRA) approval as it falls under the exception for collections undertaken ''during the conduct of . . . an administrative action or investigation involving an agency against specific individuals or entities.''

6. *National Do-Not-Call Registry.* The Commission adopts the proposal to codify the National DNC Registry's existing protections to text messages. Texters must have the consumer's prior express invitation or permission before sending a marketing text to a wireless number in the DNC Registry. The Commission previously concluded that the national database should allow for the registration of wireless telephone numbers and that such action will further the objectives of the TCPA and the Do-Not-Call Act. The Commission's action is consistent with Federal court opinions and will both deter illegal texts and make DNC enforcement easier.

7. *Email-to-Text Messages.* The Commission encourages providers to make email-to-text an opt-in service as a way to reduce the number of fraudulent text messages consumers receive. Texts originating from email addresses, rather than telephone numbers, account for a significant percentage of fraudulent text messages. For example, email-to-text gateways enable anyone to send a text message to a mobile subscriber in relative anonymity. The email-to-text messages process allows the sender to be anonymous because the text is sent from an email account on a computer, not a phone number.

8. *Closing the Lead Generator Loophole.* The Commission makes it unequivocally clear that texters and callers must obtain a consumer's prior express written consent to robocall or robotext the consumer soliciting their business. This requirement applies to a single seller at a time, on the comparison shopping websites that often are the source of lead generation. Lead-generated communications are a large percentage of unwanted calls and texts and often rely on flimsy claims of consent to bombard consumers with unwanted robocalls and robotexts. The Commission also requires that the consent must be in response to a clear and conspicuous disclosure to the consumer and that the content of the ensuing robotexts and robocalls must be logically and topically associated with the website where the consumer gave consent.

9. The Commission adopts additional protections to further guard against consent abuse and protect consumers from unwanted robocalls and robotexts. First, the one-to-one consent must come after a clear and conspicuous disclosure to the consenting consumer that they will get robotexts and/or robocalls from the seller. ''Clear and conspicuous'' means notice that would be apparent to a reasonable consumer. In addition, if compliance with the Federal Electronic Signatures in Global and National Commerce Act (the E-Sign Act) is required for the consumer's signature, then all the elements of E-Sign must be present.

10. Second, the Commission adopts the requirement that robotexts and robocalls that result from consumer consent obtained on comparison shopping websites must be logically and topically related to that website. Thus, for example, a consumer giving consent on a car loan comparison shopping website does not consent to get robotexts or robocalls about loan consolidation. The Commission declines to adopt a definition of ''logically and topically.'' This rule best balances the desire of businesses to utilize lead generation services to call and text potential customers with the need to protect consumers, including small businesses, from a deluge of unwanted robocalls and robotexts.

11. The Small Business Administration's Office of Advocacy notes that certain small businesses rely on purchasing sales leads from lead generators; however, the rule adopted today only limits sellers, of any size, from robocalling or robotexting consumers who did not explicitly consent to receive such communications from a particular seller. Lead generators can still conduct business and collect and share leads to consumers interested in products and services, they just will not be able to collect and share the consents for telemarketing calls that included an artificial or prerecorded voice or are made with an automatic dialer. Sellers that wish to use robocalls and robotexts for such communications may still do so—provided they obtain consent consistent with the reasonable limits codified in the rule.

12. This rule does not restrain comparison shopping, nor does it unnecessarily constrain a businesses' ability to rely on leads purchased from lead generators. For example, consumers may reach out to multiple businesses themselves or ask to be contacted by businesses only through means other than robocalling and robotexting. Further, sellers may avail themselves of other options for providing comparison shopping information to consumers, *e.g.,* they may initiate calls or texts to consumers without using an autodialer or prerecorded or artificial voice messages or they may use email or postal mail, both to provide information and to solicit further one-to-one consent to robocall or robotext. Nothing in this rule restricts the ability of businesses,

including small businesses, from relying on leads generated by third-party lead generators.

13. Additionally, even under the Commission's new rule, comparison shopping websites can obtain the requisite consent for sellers to robocall and robotext consumers using easily implemented methods. For instance, a website may offer a check box list that allows the consumer to choose each seller that they wish to hear from. Alternatively, a comparison shopping website may offer the consumer a clickthrough link to a business so that it may obtain requisite consent from the consumer directly. The rule does not prohibit websites from obtaining leads and merely codifies reasonable limits on when those leads allow sellers to use robocalls and robotexts to reach consumers.

14. Further, the rule protects callers who rely on leads generated by third parties by ensuring that such callers operate pursuant to legally sufficient consent from the consumers. A caller who is unable to meet its burden of proof in demonstrating that it had valid consent to initiate and robocall or robotext the individual consumer would be liable under the TCPA for making such a call. The rule helps callers and texters, including small businesses, by providing legal certainty as to how to meet their burden of proof when they have obtained consent via a third-party. Businesses relying on such leads will have an easier and more certain way to demonstrate that they have obtained valid consent to call.

15. In addition, the Commission finds that small businesses themselves will benefit from the protections adopted. Small businesses use comparison shopping services when comparison shopping for businesses services. The prior express written consent requirements are not limited to residential lines; these requirements extend to and protect business phones from having their own phones inundated with unwanted calls and texts. Such calls to these businesses may tie up small business phones, annoy small business employees, and subject them to the same type of fraud as consumers generally.

16. The Commission wants this important consumer protection rule to be successfully implemented by comparison shopping websites and lead generators. The Commission is adopting a 12 month implementation period to make the necessary changes to ensure consent complies with the new requirement. This implementation period will help mitigate some challenges to implementation of the new rules and such period should provide both lead generators and the callers that rely on the leads they generate ample time to implement our new requirements.

17. The Commission will continue to monitor the impact that the rule has on small businesses and delegates to the Consumer and Governmental Affairs Bureau authority to conduct outreach and education focusing on compliance with rules for small business lead generators as well as for small business lead buyers. The Commission also reiterates that the TCPA and existing rules already place the burden of proof on the texter or caller to prove that they have obtained consent that satisfies Federal laws and regulations. They may not, for example, rely on comparison websites or other types of lead generators to retain proof of consent for calls the seller makes. And, in all cases, the consent must be from the consumer. ''Fake leads'' that fabricate consumer consent do not satisfy the TCPA or the Commission's rules. In addition, the consumer's consent is not transferrable or subject to sale to another caller because it must be given by the consumer to the seller.

18. The Commission also disagrees with the argument that making it unequivocally clear that one-to-one consent is required for TCPA prior express written consent, is arbitrary and capricious. The Commission sought comment on this issue of consent in the FNPRM, published at 88 FR 21497 on April 11, 2023, specifically discussed the issue of hyperlinks in a comparison shopping website, and illustrated the problem by describing Assurance IQ, a website that purports to enable consumers to comparison shop for insurance. As the Commission explained, the Assurance IQ site sought consumer consent for calls and texts from insurance companies and other various entities, including Assurance IQ's ''partner companies,'' that were listed when accessing a hyperlink on the page seeking consent (*i.e.,* they were not displayed on the website without clicking on the link) and included both insurance companies and other entities that did not appear to be related to insurance. The Commission also sought comment on amending the TCPA consent requirements to require that such consent be considered granted only to callers logically and topically associated with the website that solicits consent and whose names are clearly disclosed on the same web page. Numerous commenters supported the Commission's proposals. Thus, the Commission's findings in the Second Report and Order are reasonably and rationally based on the issues for which the Commission sought comment and the comments filed.

19. *Text Message Authentication and Spoofing.* The Commission does not adopt at this time caller ID authentication requirements for text messaging.

20. *Summary of Benefits and Costs.* The Commission's conservative estimate of the total loss from unwanted and illegal texts is $16.5 billion annually, which reflects both a substantial increase in the number of spam texts in recent years (the nuisance cost), and an increase in financial losses due to text scams. The Commission estimates the nuisance cost of spam texts to be five cents per text. This cost is multiplied by 225.7 billion spam texts sent annually and the result is $11.3 billion in total nuisance cost. In addition, the Commission estimates financial losses due to text scams to be $5.2 billion. Further, the total loss from unwanted and illegal calls is relevant for the Commission's consideration of the benefit generated by closing the lead generator loophole. The harm of unwanted and illegal calls is at least $13.5 billion annually.

21. The Commission expects the actions in the Order will impose minimal costs on mobile wireless providers and comparative shopping websites. Nothing in the record demonstrates that requiring terminating providers to block texts when notified by the Commission of illegal texts would impose significant costs on mobile wireless providers. The Commission expects that terminating providers aim to minimize texts that subject their customers to nuisance and receiving notifications from the Commission would assist in that effort and help providers improve customer satisfaction. With respect to the action codifying that text messages are covered by the National DNC Registry's protections, the Commission sees no additional cost to providers.

22. The Commission notes that the new rules do not prohibit comparison shopping websites, only the use of robocalls and robotexts without one-to-one consent. The Small Business Administration's (SBA) Office of Advocacy notes that small businesses have stated that the proposal to require sellers to obtain consent to robocall or robotext from one consumer at a time could increase costs significantly for small businesses that both buy and sell sales leads, but the SBA did not offer any evidence to support this contention and did not address the benefit to both consumers and to small businesses in having a reduction of unwanted calls

and texts. This new rule makes it unequivocally clear that prior express written consent under the TCPA must be to one seller at a time, but does not prevent small businesses from buying and selling leads nor does it prevent small businesses from contacting consumers. The Commission observes that the rule is especially helpful for small business owners who are incentivized to answer all incoming calls because each call may be from a potential customer and are unable to ignore calls from unfamiliar numbers. In addition, this requirement will help small businesses because it will provide legal certainty as to how callers and texters can demonstrate valid consent when that consent was obtained via a third party.

23. The Commission's decision to make unequivocally clear that prior express written consent under the TCPA must be one-to-one consent may raise costs for some businesses that use robocalling, including those that fall under the definition of small businesses; however, no party has presented any specific data to substantiate such possible additional costs. Further, the benefits of making it unequivocally clear that one-to-one consent is required for prior express written consent under the TCPA, will accrue to millions of individuals and businesses, including small businesses, and will outweigh any such costs to those businesses currently using multi-party ''consent'' for robocalls and robotexts. Any effort to create an exception for particular businesses, including small businesses, has the potential to undermine the effectiveness and intent of the policy, which is to provide consumers (including small businesses) the ability to determine when and how they are contacted in a transparent manner.

24. The Commission sees very little cost to providers as a result of the encouragement to make email-to-text an opt-in service. Providers who do not take up this option will incur no additional cost and, for those providers who do so, the benefits of making email-to-text an opt-in service, *e.g.,* more satisfied customers, outweighs the costs of setting up an opt-in program and marketing it to their subscribers. Similarly, closing the lead generator loophole so that prior express written consent can only be given directly from a consumer to a single seller-caller at a time will result in only small additional costs for comparative shopping websites and should lead to greater customer satisfaction that may benefit such websites.

25. Based on the analysis of the anticipated benefits and costs discussed above, the Commission believes the benefits of the rules adopted in the Report and Order significantly outweigh their costs. Even if these rules eliminate only a small share of unwanted and illegal texts and calls, the benefits would be substantial, given the magnitude of the likely losses from such texts and calls.

26. *Legal Authority.* The Commission relies on the TCPA to adopt rules applicable to mobile wireless text messaging providers, including the text blocking requirement. First, the TCPA gives the Commission authority over the unsolicited text messages within the scope of the Order. The TCPA, in relevant part, restricts certain autodialed calls to wireless telephone numbers absent the prior express consent of the called party. The Commission has found that, for the purposes of the TCPA, texts are included in the term ''call.'' Because the Commission has authority to regulate certain text messages under the TCPA, particularly messages sent using an autodialer and without the consent of the called party, the Commission has legal authority to require providers to block text messages that violate the TCPA. The TCPA also provides authority for the consent requirements and the codification that text messages are covered by the National DNC Registry. The DNC restrictions have long applied to wireless phones and the Commission and courts have long held that text messages are calls under the TCPA. Further, the Commission is codifying that text messages are included in the National DNC Registry's protections—a position that the Commission and several courts have previously taken—not expanding the National DNC Registry's restrictions.

27. To the extent that the Commission may direct providers to block texts where an autodialer has not been used, the Commission further finds authority under section 251(e)(1) of the Communications Act. Section 251(e)(1) provides the Commission with independent jurisdiction to prevent the abuse of North American Numbering Plan (NANP) resources, regardless of the classification of text messaging. Requiring blocking of a particular number that has sent known illegal texts will help ensure that entities sending illegal texts cannot continue to abuse NANP resources to further their illegal schemes. Although NANP numbers are used for routing calls on the public switched telephone network (PSTN), the authority granted in section 251(e)(1) of the Act is not restricted to voice calls routed via the PSTN. Rather, section 251(e)(1) is a clear grant of authority ''over those portions of the North American Numbering Plan that pertain to the United States'' and the underlying technology does not change the fact that the numbers in question are portions of the NANP that pertain to the United States. The Commission exercises its section 251(e)(1) authority to prevent the abuse of NANP resources by sending illegal texts, regardless of whether the number is spoofed. This is consistent with the Commission's approach in calling, where the Commission has found that authority under this section does not hinge on whether a call is spoofed. The Commission also finds authority under Title III of the Act to adopt these measures. Title III ''endow[s] the Commission with 'expansive powers' and a 'comprehensive mandate to ''encourage the larger and more effective use of radio in the public interest.'' ' '' Section 303 of the Act grants the Commission authority to establish operational obligations for licensees that further the goals and requirements of the Act if such obligations are necessary for the ''public convenience, interest, or necessity'' and are not inconsistent with other provisions of law. In particular, section 303(b) authorizes the Commission to ''[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within each class,'' and that is what the notice requirement and blocking rule addresses here. In addition, sections 307 and 316 of the Act allow the Commission to authorize the issuance of licenses or adopt new conditions on existing licenses if such actions will promote public interest, convenience, and necessity. The Commission finds that the requirements adopted for mobile wireless providers after they are on notice of illegal text messages are necessary to protect the public from illegal text messages and that such a requirement is in the public interest.

28. *Waiver Order.* The Commission adopts a waiver, sua sponte, for a period of 12 months, to commence on the effective date of 47 CFR 64.1200(s) of the Commission's rules, specifically to allow mobile wireless providers to access the Reassigned Numbers Database to determine whether a number has been permanently disconnected since the date of the illegal text described in the Notification of Illegal Texts. The Commission delegates authority to the Consumer and Governmental Affairs Bureau to extend the term of this waiver, if needed. The Commission's rules require providers ensure the efficient use of telephone numbers by reassigning a telephone

number to a new consumer after it is disconnected by the previous subscriber; however, when a number is reassigned, callers may inadvertently reach the new consumer who now has the reassigned number (and may not have consented to calls from the calling party). To mitigate these occurrences, the Commission established a single, comprehensive database to contain reassigned number information from each provider that obtains NANP U.S. geographic numbers, which enables any caller to verify whether a telephone number has been reassigned before calling that number. The use of the RND to determine if a number has been disconnected following a Notification of Illegal Texts is outside of the original scope of the RND which is available only to callers who agree in writing that the caller (and any agent acting on behalf of the caller) will use the database solely to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts. The Commission may waive its rules for good cause shown. Good cause for a waiver may be found if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The Commission finds that permitting providers to access the RND for the purpose of determining if a number has been permanently disconnected after the date of an illegal text described in a Notification of Illegal Texts would prevent erroneous blocking of text messages (if the number had been reassigned) and is good cause to grant this waiver, sua sponte. The Commission therefore adopts a waiver, sua sponte, for a period of 12 months, to commence on the effective date of 47 CFR 64.1200(s) of the Commission's rules, specifically for accessing the RND to determine whether a number has been permanently disconnected since the date of the illegal text described in the Notification of Illegal Texts. Providers may access the RND for this purpose in the same manner as they would to determine whether a number has been permanently disconnected since a date provided by the caller for the purpose of making lawful calls or sending lawful texts.

Final Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM, published at 88 FR 21497, on April 11, 2023. The Federal Communications Commission (Commission) sought written public comment on the proposals in the FNPRM, including comment on the IRFA. The Commission received no comments in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

30. *Need for, and Objectives of, the Second Report and Order.* The Second Report and Order continues the Commission's efforts to stop the growing tide of unwanted and illegal texts by building on the text blocking requirements from the first Text Blocking Order, 88 FR 21497 (April 11, 2023). While mobile wireless providers voluntarily block a significant number of unwanted and illegal texts, many of these harmful texts still reach consumers. The Second Report and Order requires terminating mobile wireless providers to block texts from a particular source following notification from the Commission; codifies that the National DNC Registry protections apply to text messages; encourages mobile service providers to make email-to-text an opt-in service; and revises the definition of prior express written consent making clear that consent must be to one seller at a time, and the seller must be logically and topically related to the content of the website on which consent is obtained.

31. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

32. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* 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 SBA, and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

33. The Chief Counsel did not file comments in response to the proposed rules in this proceeding; however, the Chief Counsel filed an *ex parte* letter on December 1, 2023. The SBA contends that small businesses have stated that the proposal to require sellers to obtain consent to call or text from one consumer at a time could increase costs significantly for small businesses that both buy and sell sales leads. The SBA did not offer any evidence to support this contention and did not address the benefit to consumers and to small businesses in having a reduction of unwanted calls and texts.

34. This rule makes it unequivocally clear that prior express written consent under the TCPA must be to one seller at a time, but does not prevent small businesses from buying and selling leads or prevent small businesses from contact with consumers. The requirements for prior express written consent for the telemarketing calls covered by the TCPA will also protect business phones from the floods of unwanted prerecorded telemarketing calls. This is especially helpful for small business owners who are incentivized to answer all incoming calls because each call may be from a potential customer and they are unable to ignore calls from unfamiliar numbers. In addition, this requirement will help small businesses because it will provide legal certainty as to how callers and texters can demonstrate valid consent when that consent was obtained via a third party.

35. The Commission acknowledges that the decision to make unequivocally clear that prior express written consent under the TCPA must be one-to-one consent may raise costs for some businesses, including those that fall under the definition of small businesses, in that direct consent between a consumer and a seller requires more labor and administration than a blanket authorization for affiliated companies to contact an individual. However, the benefits of this policy, which accrue to millions of individuals and businesses, including small businesses, outweigh the costs to those businesses currently benefiting from multi-party ''consent.'' Over time, it may be possible for technological solutions to lower the costs to businesses for seeking one-to-one prior express written consent and maintaining consent records. Any effort to create an exception for particular businesses, including small businesses, has the potential to undermine the effectiveness and intent of the policy, which is to provide consumers (including small businesses) the ability to determine when and how they are contacted in a transparent manner.

36. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* 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 and policies 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.

37. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, 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 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. 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. 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, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

38. *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.

39. *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.

40. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities.* The Second Report and Order includes new or modified reporting, recordkeeping, and compliance requirements for small and other entities. This includes requiring terminating mobile wireless providers to block texts from a particular number or numbers following notification from the Commission. Providers must promptly begin blocking the identified texts if illegal, and respond to the notice. If the provider is unable to block further texts from that number because it has learned that the number has been reassigned the provider should promptly notify the Enforcement Bureau. If the provider determines at a later date that the number has been reassigned, it should notify the Enforcement Bureau, and cease blocking. Providers that fail to comply may be subject to enforcement penalties, including monetary forfeiture.

41. The Second Report and Order also codifies that the National DNC Registry protections apply to text messages, and encourages mobile service providers to make email-to-text an opt-in service. Additionally, it revises our definition of prior express written consent making clear that consent must be only to one single seller-caller from one single consumer at a time, and the seller must be logically and topically related to the content of the website on which consent is obtained. Small entities may comply with the Telephone Consumer Protection Act (TCPA) and contact consumers by obtaining consent from the consumer to one seller at a time. The Commission expects that small and other providers already taking significant measures to block illegal texts and will not find it burdensome to comply with these new obligations. Any such burdens would be far outweighed by the benefits to consumers from blocking text messages that are highly likely to be illegal.

42. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* 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.''

43. In the Second Report and Order, the Commission adopted text blocking rules modeled after the call blocking rules, but modified the new rules to account for the differences in the technology and delivery of text messages, and adopted requirements similar to those service providers were already familiar with to reduce any additional burdens. For example, a terminating provider will be required to block text messages only after it has received notice from the Commission's Enforcement Bureau. Second, text blockers are not required to block traffic ''substantially similar'' to the traffic the Enforcement Bureau identifies to avoid

blocking on content analysis, which could lead to over blocking. This modification will reduce concerns about liability for blocking incorrectly, as well as potential burdens if the Commission adopted a more expansive rule. The Commission found that commenters made general assertions, but offered no compelling evidence that they consistently block all traffic the Enforcement Bureau might identify.

44. In the Second Report and Order, the Commission also modified the prior express written consent requirement for TCPA consent to protect consumers while preserving the ability of comparison shopping websites to provide consumers with comparison shopping opportunities. This rule revision does not change the longstanding requirement that callers, including small businesses, must have consent from the called party, to comply with the TCPA. This modification makes it unequivocal that one-to-one consent is required under the Commission's TCPA consent rules. Such a requirement should not burden small entities that use lead generators to reach out to potential customers, because websites, including comparison shopping websites, can use a variety of means for collecting one-to-one consent for sellers to comply with the consent rule. For example, a website may offer a consumer a check box list that allows the consumer to specifically choose each individual seller that they wish to hear from or may offer the consumer a clickthrough link to a specific business so that the business itself may gather express written consent from the consumer directly. A website publisher could also reach out to a consumer for consent after the consumer has provided certain requested information and the site has subsequently selected a specific seller or sellers to contact the consumer.

45. The adopted modification does not prohibit comparison shopping websites from obtaining leads through valid consent and provides opportunities for such sites to obtain leads for potential callers (including small businesses) and texters. Further, this rule modification should help small businesses in reducing the number of unwanted and illegal calls and texts they receive, particularly if they cannot screen calls from unknown numbers. This rule modification best balances the needs of businesses, including small businesses, to utilize lead generation services to make calls to potential buyers with protecting consumers from a deluge of unwanted robocalls and robotexts. This will also help callers and texters, including small businesses, by providing legal certainty as to how to meet their burden of proof when they have obtained consent via a third party. Further, callers and texters may avail themselves of other options for providing comparison shopping information to consumers, *e.g.,* manually dialed or non-prerecorded or artificial voice calls or texts, email, or information displayed directly on the third party website.

46. *Report to Congress.* The Commission will send a copy of the Second Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA.

List of Subjects

47 CFR Part 0

Communications common carriers, Telecommunications.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 64 as follows:

PART 0—COMMISSION ORGANIZATION

Subpart A—Organization

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409, unless otherwise noted.

■ 2. Effective March 26, 2024, amend § 0.111 by revising paragraph (a)(27) to read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(27) Identify suspected illegal calls and illegal texts and provide written notice to voice service or mobile wireless providers. The Enforcement Bureau shall:

(i) Identify with as much particularity as possible the suspected traffic or texts;

(ii) Cite the statutory or regulatory provisions the suspected traffic appear to violate or illegal texts violate;

(iii) Provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic or the determination that the illegal texts are unlawful, including any relevant nonconfidential evidence from credible sources such as the industry traceback consortium or law enforcement agencies; and

(iv) Direct the voice service provider receiving the notice that it must comply with § 64.1200(n)(2) of the Commission's rules or direct the mobile wireless provider receiving the notice that it must comply with 47 CFR 64.1200(s).

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 3. Effective March 26, 2024, 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, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

§ 64.1200 [Amended]

■ 4. Effective March 26, 2024, amend § 64.1200 in paragraph (e) by adding ''or text messages'' after the word ''calls''.

■ 5. Effective July 24, 2024, further amend § 64.1200 by adding paragraph (s) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(s) A terminating mobile wireless provider must, upon receipt of a Notification of Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s), including, when required, blocking all texts from the identified number or numbers. The Enforcement Bureau will issue a Notification of Illegal Texts that identifies the number(s) used and the date(s) the texts were sent or received; provides the basis for the Enforcement Bureau's determination that the identified texts are unlawful; cites the statutory or regulatory provisions the identified texts violate; directs the provider receiving the notice that it must comply with this section; and provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Enforcement Bureau's Notification of Illegal Texts shall give the identified provider a reasonable amount of time to comply with the notice. The Enforcement Bureau shall make the Notification of

Illegal Texts available in EB Docket No. 23–418 at *https://www.fcc.gov/ecfs/search/search-filings.* The provider must include a certification that it is blocking all texts from the number or numbers and will continue to do so unless the provider learns that the number has been reassigned, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it shall notify the Enforcement Bureau and cease blocking. The provider is not required to monitor for number reassignments.

■ 6. Effective January 27, 2025, further amend § 64.1200 by revising paragraph (f)(9) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(f) * * *

(9) The term prior express written consent means an agreement, in writing, that bears the signature of the person called or texted that clearly and conspicuously authorizes no more than one identified seller to deliver or cause to be delivered to the person called or texted advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice. Calls and texts must be logically and topically associated with the interaction that prompted the consent and the agreement must identify the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.

(i) The written agreement shall include a clear and conspicuous disclosure informing the person signing that:

(A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls or texts using an automatic telephone dialing system or an artificial or prerecorded voice; and

(B) The person is not required to sign the agreement (directly or indirectly) or agree to enter into such an agreement as a condition of purchasing any property, goods, or services. The term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable Federal law or State contract law.

* * * * *

[FR Doc. 2023–28832 Filed 1–25–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket Nos. 21–346, 15–80; ET Docket No. 04–35; FCC 23–71; FR ID 192559]

Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) addresses the Petition for Clarification and Partial Reconsideration (Petition) filed by the Cellular Telecommunications and internet Association (CTIA) and the Competitive Carriers Association (CCA) (collectively, Petitioners) regarding the ''Mandatory Disaster Response Initiative'' (MDRI) by extending the compliance deadline. In its Order on Reconsideration, the Commission also agrees with the request to treat Roaming under Disaster arrangements (RuDs) as presumptively confidential when filed with the Commission.

DATES: The final rule is effective May 1, 2024.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Erika Olsen, Acting Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–2868 or via email at *Erika.Olsen@fcc.gov* or Logan Bennett, Attorney-Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–7790 or via email at *Logan.Bennett@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, FCC 23–71, adopted September 14, 2023, and released September 15, 2023. The full text of this document is available by downloading the text from the Commission's website at: *https://docs.fcc.gov/public/attachments/FCC-23-71A1.pdf.*

Synopsis

I. Introduction

1. The *Report and Order* adopted the MDRI to improve network resilience during disasters, aligning with the industry-developed Wireless Network Resiliency Cooperative Framework. It mandated five provisions for facilities-based mobile wireless providers, including bi-lateral Roaming under Disaster arrangements (RuDs), mutual aid agreements, municipal preparedness, consumer readiness, and public communication. In particular, the *Report and Order* requires that each facilities-based mobile wireless provider enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active. The Commission clarified that roaming is foreseeable, without limitation, when two providers' geographic coverage areas overlap. The Commission set a compliance date for the rules at the later of (i) 30 days after review of any new information collection requirements associated with the *Report and Order* by the Office of Management and Budget (OMB) or the Public Safety and Homeland Security Bureau (Bureau) determines that such review is not required, or (ii) March 30, 2023, for non-small providers and June 30, 2023, for small providers.

2. Petitioners jointly filed a Petition for Clarification and Partial Reconsideration (CTIA and CCA Petition or Petition) of the Commission's *Report and Order.* In response to the Petition, the Commission issued an Order on Reconsideration extending the compliance deadline, determining that RuD arrangements would be treated as presumptively confidential, and otherwise declining to modify the *Report and Order.*

A. Modification of Compliance Implementation Timeline

3. The CTIA and CCA Petition requests that the Commission ''[p]rovide sufficient time for wireless providers—at least 12 months for non-small facilities-based mobile wireless providers and 18 months for small facilities-based mobile wireless providers—to achieve compliance with the new obligations.'' They further ask that those dates be calculated from the date of OMB approval of the rule for Paperwork Reduction Act (PRA) purposes. As described below, the *Order on Reconsideration* establishes a single date certain for compliance by all providers of May 1, 2024, that affords a reasonable extension by providing approximately 20 months for all providers from publication of the *Report and Order* in the **Federal Register** to achieve compliance. This will extend reasonable relief to providers, while preserving the benefits of the underlying rules for consumers relying on Petitioners' networks for connectivity and emergency communications access during disasters in advance of the 2024 hurricane and wildfire seasons. In doing so, the *Order on Reconsideration* also eliminates the need to continue to

distinguish between small and non-small providers under the MDRI.

4. *Background.* In requesting an extended implementation timeframe, Petitioners argue that the Commission's estimate of 200 hours per provider for compliance is ''not aligned with the amount of work and resources that will be required to enter the multiple bilateral RuD and mutual aid arrangements and to complete roaming testing as required by the MDRI rules.'' They further argue that providers will need more time to (1) negotiate agreements and (2) complete an initial round of roaming testing. In addition, Petitioners indicate that ''[i]n some cases'' providers may not have existing agreements to leverage, raising the potential for unanticipated complexities, and may need to include ''terms unique to the disaster context in which they will be invoked.'' In instituting a deadline for providers to enter into RuDs, they further assert that the Commission has ''effectively reverse[d] course on a decade of precedent regarding the timeframes for negotiating roaming arrangements.'' Petitioners also claim that the time allowed is insufficient for providers to enter into both RuDs and mutual aid agreements and to complete the technical and operational tasks necessary to support roaming testing. Finally, Petitioners argue that providers would need to negotiate agreements and conduct testing serially, rather than simultaneously, due to resource constraints for smaller providers.

5. Relatedly, the Petition seeks clarification on three other issues impacting timeframes for compliance. First, the Petition recites that ''[t]he Commission should affirm that, like the *Resilient Networks Order*'s approach to mutual aid arrangements, the small provider compliance date applies to both parties to a RuD arrangement, as well as roaming testing, when at least one party to an arrangement is a small provider.'' Second, the Petition requests that the Commission ''[a]lign the definitions of 'non-small facilities-based' and 'small facilities-based' wireless providers with the FCC's existing definitions of 'nationwide' and 'non-nationwide' wireless providers applied in the 9–1–1 context.'' Third, the Petition asks the Commission to ''[a]ffirm that [OMB] review is required for all information collection obligations.'' Petitioners further argue that ''giving providers a mere 30 days after OMB approval to comply with § 4.17(a) and (b) is unworkable given the complexity of executing RuD and mutual aid agreements, as well as roaming testing.

6. *Comments.* In support of the Petition, one commenter cites the ''limited personnel and financial resources'' of small carriers as justification for providing at least an 18-month timeframe for compliance, suggesting that negotiating RuDs and mutual aid agreements with multiple parties and conducting testing of their roaming capabilities ''is likely to take longer than the 200 hour estimate,'' and argue that a longer timeframe would put smaller carriers on ''a more equal footing'' for negotiations. Others similarly assert that the Commission's compliance estimates for small providers is unrealistic and support an extended compliance timeframe of at least 18 months. A commenter also argues that small providers are less likely to have existing agreements to leverage, and echo the argument that truncated negotiations may negatively impact their ability to obtain reasonable terms and conditions. Another commenter also suggests that ''small rural wireless carriers will receive a lower priority from large carriers in conducting negotiations,'' and another similarly avers that ''small, rural carriers will receive a lower priority than negotiations with larger providers'' impacting their ability to timely comply.

7. One commenter in particular also emphasized the monetary impact on rural providers of the current compliance timeline, and argues extending the timeline for implementation would allow for more cost-effective compliance. A commenter states many of the same concerns, and asserts that its own ongoing experience has yielded negotiation efforts that ''significantly exceed[ ] the Commission's . . . estimate'' and that implementation and testing ''requires tens of dozens of hours or more of dedicated network engineer time for each and every potential RuD partner.'' It also expresses concern that timely compliance may be a challenge, and perhaps contrary to national security considerations, where a provider with whom an RuD is to be negotiated is subject to ''Rip and Replace'' obligations due to the presence of Chinese-manufactured network equipment.

8. As to the *Report and Order*'s use of ''small'' and ''non-small'' designations to assign differing compliance timeframes, commenters support the Petition's request to replace these designations with ''the long-standing and well-understood definitions of 'nationwide' and 'non-nationwide' wireless providers in the context of wireless 9–1–1 accuracy.'' Others call the Commission's non-small and small distinctions of providers too ''narrow'' and do not find that the definitions can ''recognize the extent of the burden the new rules will place on small and regional providers that may have 1,500 or more employees . . . but [will still] be challenged to achieve compliance within the deadlines imposed by the [*Report and Order*].'' A commenter also asserts that companies like itself that have large employee counts across affiliated businesses may in reality only have small resources attached to their telecommunications-specific enterprises.

9. *Decision.* The *Order on Reconsideration* agrees with Petitioners and commenters that an extension of time is warranted in order for providers to timely implement elements of the MDRI. For the reasons discussed below, the *Order on Reconsidration* establishes a single, date certain of May 1, 2024, for compliance with all elements of the MDRI regardless of the size of the provider (in the unlikely event that PRA review remains pending on May 1, 2024, set the compliance date for all elements of the MDRI will be 30 days following publication of an announcement that OMB review is completed).

10. As the record reflects, some providers will likely need additional time to coordinate with other providers, conduct testing, and establish new mutual aid relationships. As Petitioners and commenters also note, certain elements of the MDRI require expenditure of more time and effort initially compared to later on when these agreements and arrangements will be more established and routine. As such, while the Commission is persuaded that a reasonable extension is appropriate to accommodate the concerns expressed by providers, we do not believe that the lengthy extension requested is justified or necessary, and may unreasonably delay the benefits of the MDRI. The *Order on Reconsideration* finds that a May 1, 2024 compliance date should afford providers more flexibility to allocate their resources to meet the MDRI's requirements while still supporting the need for prompt execution of these agreements and responsibilities in support of disaster response and preparedness.

11. In particular, the Commission finds that the Petitioners' full requested timeframes would unreasonably delay the benefits of the MDRI, and would likely result in a compliance date more than two and a half years from the adoption of the *Report and Order* for most providers, eclipsing not only the 2023 hurricane season (defined as from June 1 to November 30) *and* the 2023

wildfire season (generally during the summer months, or later in Western states) but the entirety of hurricane and wildfire seasons in 2024 as well. This would place wireless consumers impacted by these disaster scenarios at greater risk for being unable to reach 911, call for help, or receive emergency information and assistance. While there are costs associated with these obligations both in terms of monetary and other resource commitments for subject providers, the Commission continues to find that the benefits outweigh these costs. The timeframe requested by Petitioners, moreover, unreasonably dilutes those benefits in a context in which prompt action is likely to save lives and property.

12. In setting a single deadline, the *Order on Reconsideration* further finds the distinction between small and non-small providers is no longer necessary to perpetuate for two reasons. First, whereas non-small providers were originally afforded 6 months (March 30, 2023) and small providers were afforded 9 months (June 30, 2023) initially providing different compliance dates based on provider size, the *Report and Order* contemplated a singular date if OMB review were delayed beyond these timeframes. As OMB has not yet completed its review at the time of the *Report and Order,* the singular date contingency had materialized. Second, the *Order on Reconsideration* finds this outcome largely consistent with the ultimate outcome advocated by Petitioners when their requests are taken as a whole. That is, if one accepted Petitioners' request to use nationwide/non-nationwide distinctions for purposes of the MDRI and clarified that in all instances where a nationwide and non-nationwide provider were parties to a negotiation warranted a longer compliance timeframe, this would result in virtually all negotiations being subject to the longer timeframe except in those very few instances when a nationwide provider is negotiating with another nationwide provider. It is far simpler, and equally equitable, to provide a common timeframe across all scenarios.

13. Commenters further note that additional time has been afforded to small providers for compliance in other contexts, *e.g.,* with respect to certain E911 and Wireless Emergency Alert (WEA) obligations. The *Order on Reconsideration* finds those examples inapposite here. In the E911 and WEA context, newly required obligations involved the potential for network modifications and upgrades or equipment availability in a way that is not present or relevant here.

14. The Petition and related comments further argue that the 200-hour estimate provided by the Commission did not properly account for the amount of time and resources necessary for entering into multiple bilateral RuD and mutual aid arrangements and to complete roaming testing. In particular, Petitioners and commenters claim that the estimate does not properly account for the complexity of negotiating and executing the required arrangements for many regional and local providers, *e.g.,* providers may have to negotiate arrangements and complete roaming testing with a large number of providers, some providers do not have existing agreements with other providers and may need to address unanticipated complexities or include terms unique to certain disaster contexts, and some providers lack the resources to negotiate agreements and conduct testing with multiple providers at the same time.

15. The *Order on Reconsideration* disagrees with Petitioners' view that the Commission did not appropriately account for the level of likely burden on providers in the *Report and Order.* In reaching its conclusion, the *Report and Order* specifically took into account assertions by small and regional entities regarding actions already undertaken to engage in storm preparation, information and asset sharing as well as their assertions that many ''already abide'' by the principles on which the MDRI is based, concluding that setup costs would be limited, and otherwise noting examples in the record around existing efforts, time and resources expended in support of the activities codified in the MDRI. As such, it was reasonable to assume that providers existing engagements could be levied in support of these obligations, and accordingly providing a reasoned estimate associated with the actions required by regional and local providers to update or revise their existing administrative and technical processes to conform to processes required the MDRI. Further, the *Report and Order* noted the lack of record comment regarding recurring costs. As such, we do not believe the *Report and Order* erred in its conclusion.

16. However, even taking as true Petitioners assertion that the *Report and Order* miscalculated the burden, and considering the additional arguments presented regarding complexity and limited resources and the possible need to negotiate serially, the *Order on Reconsideration* finds the extension granted accounts for the additional burdens that Petitioner and commenters have asserted (the date extension for implementation of the MDRI should address concerns surrounding small providers and the 200-hour estimated burden).

17. Petitioners also argue that the Commission has departed from its own precedent by establishing a compliance deadline for entering into roaming agreements. The *Order on Reconsideration* disagrees and finds that there is a compelling public interest in ensuring the availability of networks during a disaster justifies the need for an established deadline. An open-ended timeframe in this regard also fails to take into account the need to enhance and improve disaster and recovery efforts on the ground in preparation for, during, and in the aftermath of disaster events, including by increasing predictability and streamlining coordination in recovery efforts among providers.

18. *Additional Small Provider Considerations.* The *Order on Reconsideration* also finds that the bargaining inequity posited by smaller providers in their comments with respect to the roaming arrangements and mutual aid agreements is also mitigated by the extension granted. Moreover, RuDs and mutual aid agreements in this context are required to adhere to a reasonableness standard, with negotiations conducted in good faith, with disputes and enforcement provided for before the Commission. The *Order on Reconsideration* finds that these safeguards adequately address these concerns. With respect to the argument that small providers in particular may need to conduct negotiations serially rather than simultaneously due to resource constraints, the Commission does not find that this circumstance alone prevents timely compliance, and Petitioners and commenters do not provide sufficient evidence that sequential negotiations for some subset of providers requires industry-wide revisions of compliance timeframes. Moreover, the extension of time should accommodate the need for smaller providers to serially negotiate if necessary.

19. *Rip and Replace.* As to the possibility that a provider's need to complete ''Rip and Replace'' activities prior to implementing or completing initial testing of RuD or mutual aid arrangements under the MDRI could delay timely compliance, the Commission expect that these instances are specific enough to be addressed in a petition for waiver, in response to which the Bureau could consider whether special circumstances justify an appropriate delay.

20. *Related Requests for Clarification.* Finally, in establishing the singular compliance date for all facilities-based mobile wireless providers, it is unnecessary to address Petitioners' other requests. In particular, the Petitioners' request the Commission reconsider its use of ''small'' versus ''non-small'' delineations preferring the use of ''nationwide'' and ''non-nationwide'' as used in the 911 context instead. However, the adoption of a unified implementation timeline for all providers makes differentiating between providers irrelevant. Similarly, their request for clarification as to the applicable timeframes when parties to an RuD arrangement or roaming testing include one small and one non-small provider is also unnecessary, as all providers are subject to the same revised compliance date. While the Commission also disagrees that the compliance timeframes adopted in the *Report and Order* are in any way unclear, and therefore that the Commission should ''reaffirm'' the applicability of the PRA timeframes to particular provisions of the rule, the *Order on Reconsideration* grants dispensation to all parties by extending the May 1, 2024, compliance date to all provisions of § 4.17. (To the extent providers have professed disagreement or confusion as to the applicability of the PRA to a particular element of § 4.17, we forbear from enforcement action for any violations that may have occurred during the pendency of the Petition and until the new compliance date occurs.) It should be noted that § 4.17(e) previously set forth a separate compliance date for the requirement to enter into mutual aid arrangements, but in modifying the implementation timing and to provide clarity, the Commission finds it most logical for all elements of the MDRI to have the same timing (*see* para. 25, supra, ''Providers must have mutual aid arrangements in place within 30 days of the compliance date of the MDRI''). In the *Order on Reconsideration,* the Commission eliminates the distinction between the mutual aid arrangement requirement and the other requirements under the MDRI to provide clarity and simplicity for implementation. In doing so, the Commission provides a clear date to eliminate confusion, give providers extra time for implementation and provide certainty not only to Petitioners and commenters as to the scope and timing of their obligations, but to the public safety and related incident planning and response organizations that support communities during disasters, and the public that relies on these networks. Petitioners' other argument that the entire rule implicates PRA shall be resolved through the PRA process.

B. List of Providers Subject to the MDRI

21. The Petitioners ask that the Commission ''[p]rovide a list of potential facilities-based mobile wireless providers to which the MDRI may apply, so that providers can determine with more certainty the scope of their obligation to execute Roaming under Disaster ('RuD') arrangements with all 'foreseeable' wireless providers.'' Further, Petitioners ask the Commission to ''publish the list on the FCC's website'' and request that they ''update the list on a regular basis.'' As detailed below, the existing public information published by the Commission in connection with its Form 477 information collections and available to Petitioners and other providers adequately identify those potentially subject to the MDRI. This resource coupled with other public information available to Petitioners, as well as the additional clarification we offer below on when roaming may be ''foreseeable'' for MDRI purposes, provides adequate clarity in the Commission's view for Petitioners to execute their obligations.

22. *Background.* Petitioners argue that providers need a Commission-generated list to ensure they are engaging with all other providers for required RuDs, mutual aid agreements, and testing of roaming under § 4.17. The Petition states that a failure to do so frustrates both providers and the Commission's goals of the *Report and Order* and creates a challenge to determining whether providers have reached compliance with the MDRI. In particular, they assert that they have spent resources on determining foreseeable roaming partners using the Commission's estimated number of applicable providers as specified in the *Report and Order,* but were only able to identify fewer than half of the 63 providers referenced.

23. *Comments.* In support the Petition, commenters contend that while roaming is foreseeable ''when two providers' geographic coverage areas overlap,'' there is an issue with small carriers who may know the ''identity of competing service providers in their territory, [but] may not have an existing business relationship with them, and . . . may not know the appropriate legal and/or technical personnel who are responsible for implementing roaming and mutual aid discussions.'' Commenters agree that the list is necessary to ''avoid ambiguity when implementing the MDRI, streamline the initial contact process, [and] clarify regulatory obligations for large and small carriers alike.'' They recommend that the Commission compile the initial list and allow providers to identify appropriate points of contact and to update the list if providers implement new technology, merge with or are acquired by another service provider, or stop offering mobile wireless service. They further suggest that the Commission's Disaster Information Reporting System (DIRS) might serve as a model for collecting and maintaining contact information. In particular, DIRS, ''provides communications providers with a single, coordinated, consistent process to report their communications infrastructure status information during disasters and collects this information from wireline, wireless, broadcast, cable, interconnected VoIP and broadband service providers.'' Another commenter similarly concludes that an ''official and continually updated resource of contact information would streamline the process and clarify obligations for all providers.''

24. *Discussion.* The Commission is not persuaded that a Commission-maintained list specifically for this purpose is the most efficient and effective means for providers to identify those other facilities-based mobile wireless providers subject to the MDRI. Petitioners assert that they were unable to identify a full roster of facilities-based mobile providers based on the Commission's estimate that 63 facilities-based mobile wireless providers that are not signatories to the Wireless Resiliency Cooperative Framework would be required to undertake certain activities to comply with the new rule. Specifically, they assert that ''several of the Petitioners' members have worked in good faith, and expended resources and time, through Petitioners and the companies' established business channels, to compile information on the relevant points of contact and subject matter experts for their respective companies and identify contact information for all providers subject to these new requirements'' but that they ''have been able to identify fewer than half of the 63 facilities-based providers that the *Resilient Networks Order* identifies as subject to the MDRI rules.'' Because they were unable to do so, they argue this should obligate the Commission to take on the responsibility of identifying and maintaining a list of providers subject to the MDRI. However, the information used to provide this estimate in the *Report and Order* is readily available to providers.

25. In estimating the number of providers subject to the MDRI, the *Report and Order* relied on data on the number of entities derived from 2022 Voice Telephone Services Report (VTSR). The information from the VTSR is derived from Form 477 filings made with Commission. The Commission already publishes the underlying list of Form 477 ''Filers by State'' and periodically updates this information. This pre-existing tool identifies, on a state-by-state basis, those filers subject to Form 477 filing obligations; those marked as ''mobile voice'' providers make up the total utilized by the Commission to estimate those subject to the MDRI. The Commission believes a simple sorting of this information, coupled with a provider's own knowledge of its particular service area, provides sufficient basis for a provider to (1) identify the providers subject to the MDRI; and (2) identify the relevant providers within this set with whom they should engage under the MDRI for establishing RuDs and mutual aid agreements. For example, the *Report and Order* makes clear that ''each facilities-based mobile wireless provider [shall] enter into mutual aid arrangements with all other facilities-based mobile wireless providers from which it may request, or receive a request for aid during emergencies.'' Utilizing the ''Filers by State'' tool, as well as their geographic knowledge of their own service area, past emergencies, and business relationships, it should be similarly clear to providers which other providers they could potentially receive or request aid from during an emergency.

26. *Foreseeability.* To provide additional guidance, the *Order on Reconsideration* also delineates additional context for considering when it may be ''foreseeable'' for a provider to need to roam onto another provider's network under an RuD. In terms of foreseeability for RuD purposes, the Commission continues to find that a particular provider is in the best position to know with which other providers its coverage area overlaps. In identifying foreseeable roaming partners, a provider should be able to leverage the information about its own coverage to reasonably predict which other providers may wish to enter into bilateral roaming arrangements or mutual aid agreements from publicly available service area maps, information in the Commission's Universal Licensing System (ULS), utilizing an internet search or other research sources to identify local providers. Indeed, providers have clear competitive incentives to familiarize themselves with competing providers who cater to their geographic area and consumers. In this respect, providers subject to the MDRI could, by way of example, reach out to all providers who are within their geographic service area to help satisfy this obligation. Some commenters appear to concede that geographic overlap is sufficient to understand what constitutes ''foreseeable'' roaming, only citing as an impediment to MDRI implementation that providers may not already have an existing relationship with each other.

27. *Contact information.* With respect to the need to identify contacts and establish relationships, nothing in the *Report and Order* prevents providers from making such information available of their own accord on a website or other such resource. In this respect, the bi-lateral nature of the roaming and mutual aid obligations also dictates that providers will be reaching out to each other, providing multiple avenues for mutual identification. As such, the *Order on Reconsideration* does not find that the Commission is in a better position than the individual providers to accumulate, collect, or maintain this information.

28. Moreover, as the some commenters acknowledge, instituting a process for Commission collection and dissemination of this data may have PRA or other privacy implications. The *Order on Reconsideration* finds that this effort could unreasonably delay the MDRI's implementation, particularly when the alternative is achievable with little burden. It is simpler, more efficient and more logical that providers use existing knowledge of their geographic coverage area, geographic competitors, and existing business relationships to begin implementation immediately without the need for undue delay by waiting for the Commission to re-organize information on an industry-wide basis that already exists with the providers themselves.

29. The Commission continues to find that the *Report and Order* requirement for each facilities-based mobile wireless provider to enter into bilateral roaming agreements with all other facilities-based mobile wireless providers from which it may foreseeably request roaming privileges, or that may foreseeably request roaming privileges from it, when the MDRI is active, to be a reasonable basis by which providers can identify potential RuD partners. And while the *Report and Order* is clear that roaming is foreseeable, without limitation, when two providers' geographic coverage areas overlap, we refine this explanation to acknowledge that radio frequency propagation may result in some variables as to coverage area contours. In this respect, coverage areas in this context overlap where a provider ''knows or reasonably should have known'' that its ''as-designed'' network service area overlaps with the service area of another provider. For instance, a provider should be able to reasonably predict which other providers may wish to enter into bilateral roaming agreements or mutual aid agreements from publicly available service area maps, information in the Commission's Universal Licensing System (ULS), utilizing an internet search or other research sources to identify local providers, being aware of competing providers who cater to their geographic area and consumers, or other similar engagements.

C. Notification of MDRI Activation

30. The Petition requests that the Commission ''[e]stablish the process that [the Bureau] will use to inform facilities-based wireless providers that [the] MDRI is active, including by providing notice via email to facilities-based wireless providers.'' Petitioners argue that ''it is critical that all facilities-based wireless providers are immediately aware of such an activation through automatic electronic notifications.'' They further state that the Commission already uses a similar process to notify providers of the activation of its Disaster Information Reporting System (DIRS). As described below, we decline to establish a specific mechanism to provide direct alerts for MDRI activation. Rather, the *Order on Reconsideration* finds the existing widely utilized and public notification mechanisms sufficient to afford prompt notice of MDRI activation.

31. *Background.* The MDRI is activated when (i) any entity authorized to declare Emergency Support Function 2 (ESF–2) activates ESF–2 for a given emergency or disaster, (ii) the Commission activates the Disaster Information Reporting System (DIRS), or (iii) the Commission's Chief of the Public Safety and Homeland Security Bureau issues a Public Notice activating the Mandatory Disaster Response Initiative (MDRI) in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency. The *Report and Order* delegated authority to the Bureau to issue a Public Notice effectuating the MDRI under these circumstances but did not provide a specific manner in which the Commission might otherwise notify providers.

32. *Comments.* Some commenters agree Petitioners' request for the Commission to base its notice procedures for the MDRI's activation ''on the practice currently used for activating the Disaster Information Reporting System [(DIRS)] . . . [citing the importance] that all facilities-based wireless providers are made aware of such an activation.'' One commenter further opines that small providers would have the flexibility to ''designate multiple points of contact to receive such notices,'' which would ensure that providers are aware of activation and could act accordingly. Another commenter is also in agreement, explaining that ''the FCC should . . . provide notice of activation . . . directly by email from [PSHSB] staff to designated carrier points of contact.''

33. *Discussion.* The Petitioners claim that automatic electronic notification is necessary to (1) make sure that all facilities-based wireless providers are immediately aware of the MDRI activation and to (2) provide small wireless providers with the flexibility to designate multiple points of contact to receive notice of the MDRI activation, which will ensure the effectiveness of the system. The Commission is not persuaded that obligating the Commission to notify providers subject to the MDRI directly of its activation through electronic notification is necessary, and decline to modify the *Report and Order* in this regard.

34. In so deciding, the Commission notes that the Petition's comparison to DIRS operating procedures is not applicable in this instance. Unlike MDRI activations, DIRS is a voluntary reporting system where the responsibility and decision to report information sits with the providers themselves and not the Commission. While the Bureau similarly issues a Public Notice when DIRS is activated, sharing DIRS activation status, like the email notification provided to DIRS registrants, is merely a courtesy incidental to the purpose of the system. The primary mechanism remains the Public Notice, and the various routine publication and distribution venues employed for all Commission documents such as the Daily Digest and the Commission website. While the *Order on Reconsideration* declines to require it here, the Commission fully anticipates that the Bureau would similarly employ additional methods when available and appropriate to the circumstance to widely disseminate information regarding MDRI activation.

35. While the Commission agree that it is in the public interest to broadly publicize MDRI activation, existing pathways are sufficient as they are now and providers hold the primary responsibility to be aware of their obligations. As such, the *Order on Reconsideration* declines to revise our determination that a Public Notice issued by the Bureau is appropriate legal notice triggering MDRI obligations. However, to the extent that DIRS or NORS may be able to provide a relevant vehicle for the Bureau to provide courtesy MDRI activation notice, the *Order on Reconsideration* directs the Bureau to consider its feasibility.

D. Confidential Treatment of RuDs

36. *Background.* The Petitioners ask the Commission to affirm that it ''will treat RuD arrangements provided under § 4.17(d) as presumptively confidential.'' In particular, Petitioners claim that presumptive confidentiality for RuDs is appropriate because (1) the RuDs contain commercially sensitive and proprietary information that providers customarily treat as confidential; (2) the Commission treats roaming agreements as presumptively confidential under the existing data-roaming rules; and (3) the Commission treats analogous information submissions as presumptively confidential. Blooston Rural Carriers also favor a presumption of confidentiality. The *Order on Reconsideration* agrees, and clarifies that such submissions will be treated as presumptively confidential.

37. *Discussion.* Under the *Report and Order,* RuDs are not routinely submitted and are provided to the Commission only on request. As such, the Commission found it sufficient to consider confidentiality of such submissions on an *ad hoc* basis when requested by a submitting party. Petitioners correctly point out, however, that submissions to the Commission of data roaming agreements are afforded presumptively confidential treatment, and they further argue that RuDs may be incorporated into broader roaming arrangements. (*See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services,* Second Report and Order, 26 FCC Rcd 5411, 5450, para. 79 (2011) (''[I]f negotiations fail to produce a mutually acceptable set of terms and conditions, including rates, the Commission staff may require parties to submit on a confidential basis their final offers, including price, in the form of a proposed data roaming contract.'') They also assert that such treatment for both RuDs and mutual aid agreements would be consistent with the treatment for outage information supplied under other provisions of the Commission's part 4 rules. The *Order on Reconsideration* concurs that RuD submissions are likely to contain the same types of sensitive trade secret or commercial and financial information we have found in other contexts to merit such a presumption. As such, the Commission reconsiders its prior *ad hoc* approach, and will afford a presumption of confidentiality to RuDs filed with the Commission.

II. Procedural Matters

A. Paperwork Reduction Act

38. This document does not contain new or substantively modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). This document may contain a non-substantive and non-material modification of information collection requirements that are currently pending review by the Office of Management and Budget (OMB). Any such modifications will be submitted to OMB for review pursuant to OMB's non-substantive modification process.

B. Congressional Review Act

39. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), 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).

C. Supplemental Final Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* (*Resilient Networks Notice*) released in October 2021. The Commission sought public comment on the proposals in these dockets in the *Resilient Networks Notice.* No comments were filed addressing the IRFA. In the *Resilient Networks Report and Order and Further Notice of Proposed* released in July 2022 (*Report and Order*) the Commission prepared a Final Regulatory Flexibility Analysis (FRFA) and sought written

comments on the FRFA. No comments were filed addressing the FRFA. In October 2022, the Cellular Telecommunications and internet Association (CTIA) and the Competitive Carriers Association (CCA) (collectively, Petitioners) filed a Petition for Clarification and Partial Reconsideration (Petition) of the *Report and Order* which included issues impacting small entities. Several parties filed comments in response to the Petition. A summary of the relevant issues impacting small entities in the Petition, comments and addressed in the *Order on Reconsideration* are detailed below. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) reflects actions taken in the *Order on Reconsideration,* supplements the FRFA included with the *Report and Order,* and conforms to the RFA.

D. Need for, and Objectives of, the Order on Reconsideration

41. In the *Report and Order,* the Commission adopted rules that require all facilities-based mobile wireless providers to comply with the Mandatory Disaster Response Initiative (MDRI), which codified the Wireless Network Resiliency Cooperative Framework (Framework) agreement developed by the wireless industry in 2016 to provide mutual aid in the event of a disaster, and expand the events that trigger its activation. (The Framework commits its signatories to compliance with the following five prongs: (1) providing for reasonable roaming arrangements during disasters when technically feasible; (2) fostering mutual aid during emergencies; (3) enhancing municipal preparedness and restoration; (4) increasing consumer readiness and preparation, and (5) improving public awareness and stakeholder communications on service and restoration status. Under the Report and Order's amended rules, the Mandatory Disaster Response Initiative incorporates these elements, the new testing and reporting requirements and will be activated when any entity authorized to declare Emergency Support Function 2 (ESF–2) activates ESF–2 for a given emergency or disaster, the Commission activates the Disaster Information Reporting System (DIRS), or the Commission's Chief of Public Safety and Homeland Security issues a Public Notice activating the MDRI in response to a state request to do so, where the state has also either activated its Emergency Operations Center, activated mutual aid or proclaimed a local state of emergency.)

42. The *Report and Order* also implemented new requirements for testing of roaming capabilities and MDRI performance reporting to the Commission. These actions were taken to improve the reliability, resiliency, and continuity of communications networks during emergencies. Further, the requirements uniformized the nation's response efforts among facilities-based mobile wireless providers who prior to the *Report and Order,* implemented the Framework on a voluntary basis. Recent weather events and other natural disasters such as Hurricane Ida, hurricanes and earthquakes in Puerto Rico, severe winter storms in Texas, and hurricane and wildfire seasons generally, continue to demonstrate the continued susceptibility of the United States' communications infrastructure to disruption during such events. Accordingly, the Commission's adoption of the MDRI requirements in the *Report and Order* sought to implement the appropriate tools to promote public safety, improve reliability of the telecommunications infrastructure during emergency events, improve provider accountability as well as increase Commission awareness.

43. In the *Order on Reconsideration,* in response to Petitioners' and commenters' request for an extension of time for implementing roaming arrangements and mutual aid agreements, the Commission provided an extension for all providers, regardless of size, and implement a single, uniform compliance date of May 1, 2024, for all providers to comply with § 4.17. With this extension the Commission eliminates the distinction between small and non-small providers as previously distinguished in the *Report and Order.* Whereas small providers had originally been granted a longer timeline of nine months for implementation in comparison to the six months granted for non-small providers in the *Report and Order,* on reconsideration the extension we grant will result in all providers having almost two years from the date of publication of *Report and Order* in the **Federal Register** to comply with the relevant MDRI requirements. Further, the extension should allow small providers the additional time to manage resources and take the other necessary steps to meet these requirements. Additionally, the Commission has and continues to encourage large providers to assist small providers with the implementation process, and believes the rules as clarified in the *Order on Reconsideration* continue to take into account the unique interests of small entities as required by the RFA.

44. The *Order on Reconsideration* also furthers the Commission's efforts to address the findings of the Government Accountability Office (GAO) concerning wireless network resiliency. As we discussed in the *Report and Order,* in 2017, the GAO, in conjunction with its review of federal efforts to improve the resiliency of wireless networks during natural disasters and other physical incidents, released a report recommending that the Commission should improve its monitoring of industry efforts to strengthen wireless network resiliency. The GAO's conclusion that more robust measures and a better plan to monitor the Framework would help the FCC collect information on the Framework and evaluate its effectiveness resulted in several inquiries and investigations by the Bureau to better understand and track the output and effectiveness of the Framework, and other voluntary coordination efforts that promote wireless network resiliency and situational awareness during and after weather events and other emergencies. (Following Hurricane Michael, for example, the Bureau issued a report on the preparation and response of communications providers finding three key reasons for prolonged outages during that event: insufficiently resilient backhaul connectivity; inadequate reciprocal roaming arrangements; and lack of coordination between wireless service providers, power crews, and municipalities.) The Commission's actions on reconsideration to move forward with the MDRI requirements adopted the *Report and Order* continue to further the Commission's monitoring, oversight and efforts to improve wireless network resiliency by the industry.

E. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

45. There were no comments filed that specifically address the proposed rules and policies in the IRFA. However, as we mention above, in response to the final rules adopted in the *Report and Order,* the CTIA and CCA Petition and comments were filed involving issues impacting small entities. Specifically, the Petitioners requested that the Commission align the definitions of 'non-small facilities-based' and 'small facilities-based' mobile wireless providers with the Commission's existing definitions of 'nationwide' and 'non-nationwide' wireless providers applied in the 9–1–1 context, clarify the small provider

compliance date applies when parties to a negotiation include one small and one non-small provider, and extend the deadline for implementing the new MDRI requirements for small and other wireless providers. Regarding these requests, the compliance deadline extension adopted in the *Order on Reconsideration* negated the need for the Commission to rule on the other two requests.

46. Petitioners also requested that the Commission publish and maintain a list of providers subject to the MDRI, provide direct, individual notification to providers when the MDRI is activated, and treat as confidential on a presumptive basis provider Roaming under Disaster arrangements (RuDs). In the *Order on Reconsideration,* the Commission determined that only confidential treatment on a presumptive basis for provider RuDs is warranted and decline to adopt further revisions. Specifically, the Commission declined to adopt the Petitioners' and commenters' other requests first finding that having the Commission maintain and publish a list is neither an efficient or effective way for providers to identify other facilities-based wireless providers who are subject to the MDRI. Second, the COmmission continue to maintain the view that awareness of MDRI activation is the responsibility of providers, and having the Bureau issue notice via a Public Notice is sufficient.

F. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

47. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

G. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

48. 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.

49. As noted above, a FRFA was incorporated in the *Report and Order.* In the FRFA, the Commission described in detail the small entities that might be significantly affected by the *Report and Order.* Accordingly, in this Supplemental FRFA, the Commission adopted by reference from the *Report and Order* the descriptions and estimates of the number of small entities that might be impacted by the *Order on Reconsideration.*

H. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

50. The requirements from the *Report and Order* the Commission upholds on reconsideration in today's *Order on Reconsideration* will impose new or modified reporting, recordkeeping and/or other compliance obligations on small entities. The rules require all facilities-based mobile wireless providers to make adjustments to their restoration and recovery processes, including contractual arrangements and public outreach processes, to account for MDRI. The mutual aid, roaming, municipal preparedness and restoration, consumer readiness and preparation, and public awareness and stakeholder communications provisions codified and implement the flexible standard in voluntary Framework developed by the industry. In accordance with the Safe Harbor provision we adopted in the *Report and Order,* pursuant to § 1.16 of the Commission's rules providers maintain the ability to file a letter in the any of dockets associated with this proceeding asserting that they are in compliance with the Framework's existing provisions, and have implemented internal procedures to ensure that it remains in compliance with the provisions. Further, small and other providers remain obligated to comply with the provision from the *Report and Order* that expands the events that trigger its activation and that require providers test and report on their roaming capabilities to ensure that the MDRI is implemented effectively and in accordance with the Commission's rules.

51. On reconsideration, the modifications in the *Order on Reconsideration* did not impact or change the cost of compliance analysis and estimates for small and other providers made in the *Report and Order* and therefore, the Commission does not repeat them. As we discussed in the initial FRFA in this proceeding, the MDRI rules only apply to facilities-based mobile wireless providers, which included small entities as well as larger entities. The Commission has not developed a small business size standard directed specifically toward these entities. However, in our cost estimate discussion in the *Report and Order,* we estimated costs based on Commission data that there are approximately 63 small facilities-based mobile wireless providers and these entities fit into larger industry categories that provide these facilities or services for which the SBA has developed small business size standards.

52. The Commission maintains its conclusion that the benefits of participation by small and other providers likely will exceed the costs for affected providers to comply with the rules adopted in the *Report and Order.* As recommended in the *Report and* Order, the Commission encourages non-small providers to assist smaller providers who may not have present aid and roaming arrangements. The Commission also acknowledges concerns commenters that smaller and more rural providers may not have the same resources or time to commit to implementation of the MDRI and the Petition's concern that smaller providers might need to hire additional staff or spend limited resources on external support to execute these arrangements and manage them in an ongoing manner, but the Commission believes granting an extension of time for compliance allows providers of all sizes the necessary timeline for achieving implementation, even on an individualized basis for each agreement that needs to be arranged. The *Order on Reconsideration* also maintains that the substantial benefits attributable to improving resiliency in emergency situations and the significant impact that is likely to result in the health and safety of the public during times of natural disasters, or other unanticipated events that could impair the telecommunications infrastructure and networks, cannot be overstated.

I. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

53. 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.''

54. The Commission took several steps in the *Order on Reconsideration* that should minimize the economic impact of compliance with the *Report and Order* for small entities. On

reconsideration the Commission granted an extension of time for small entities to comply with all of the provisions of the MDRI. The *Order on Reconsideration* adopted a uniform compliance date for all providers which results in approximately twenty months (almost two full years) from the **Federal Register** publication to implement the requirements. This extension accounts for the resource concerns expressed by Petitioners, while maintaining the important role the MDRI requirements play in facilitating the ability of the American public to call for help, and receive emergency information and/or assistance during natural disasters, and other emergency situations. The Commission also granted a presumption of confidentiality for filed RuDs which eliminates the additional step for small entities of having to submit a request for confidential treatment under § 0.459 of the Commission's rules when filing an RuD with the Commission when requested. As discussed above, in the *Order on Reconsideration* the Commission considered the other alternatives in the Petitioners' request for clarification and/reconsideration and we declined to adopt any of those approaches. The Commission was not persuaded that the increased Commission involvement, expenditure of Commission resources, and the undue delay in implementing the MDRI which would have occurred had we adopted the alternatives requested by Petitioners and commenters was in the public interest, or outweighed the benefits of moving forward with the MDRI requirements as adopted in the *Report and Order.*

III. Ordering Clauses

52. Accordingly, *it is ordered,* pursuant to sections 1, 4(i), 4(j), 4(n), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 405, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 154(n), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 405, 615a–1, and 615c, and § 1.429 of the Commission's rules, 47 CFR 1.429, that this Order on Reconsideration *is adopted.*

53. *It is further ordered* that Part 4 of the Commission's rules, 47 CFR part 4, *is amended* as set forth in the Appendix, and that such rule amendments *shall be effective* 30 days after publication in the **Federal Register**.

54. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this Order on Reconsideration in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 4

Airports, Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 4 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

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

Authority: 47 U.S.C. 34–39, 151, 154, 155, 157, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b); 5 U.S.C. 301, and Executive Order no. 10530.

■ 2. Amend § 4.17 by revising paragraph (e) to read as follows:

§ 4.17 Mandatory Disaster Response Initiative.

* * * * *

(e) Compliance with the provisions of this section is required beginning May 1, 2024, or 30 days following publication of an announcement that OMB review is completed, whichever occurs later. The Commission will revise this section once the compliance date is established.

[FR Doc. 2023–28834 Filed 1–25–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 227

Docket No. FRA–2009–0044, Notice No. 2]

RIN 2130–AC14

Emergency Escape Breathing Apparatus Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its regulations related to occupational noise exposure in three ways. First, in response to a congressional mandate, FRA is expanding those regulations to require that railroads provide an appropriate atmosphere-supplying emergency escape breathing apparatus to every train crew member and certain other employees while they are occupying a locomotive cab of a freight train transporting a hazardous material that would pose an inhalation hazard in the event of release during an accident. Second, FRA is changing the name of this part of its regulations from ''Occupational Noise Exposure'' to ''Occupational Safety and Health in the Locomotive Cab'' to reflect the additional subject matter of this final rule and to make other conforming amendments. Third, FRA is removing the provision stating the preemptive effect of this part of FRA's regulations because it is unnecessary.

DATES: This final rule is effective March 26, 2024. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of March 26, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Watson, Occupational Safety and Health Manager, Office of Railroad Safety, telephone 202–493–9544, email: *michael.watson@dot.gov* or Richard Baxley, Attorney-Adviser, Office of the Chief Counsel, telephone: 202–853–5053, email: *richard.baxley@dot.gov.*

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

AAR—Association of American Railroads
AIHA—American Industrial Hygiene Association
ANSI—American National Standards Institute
ASLRRA—American Short Line and Regional Railroad Association
BLET—Brotherhood of Locomotive Engineers and Trainmen
BNSF—BNSF Railway Company
BRS—Brotherhood of Railroad Signalmen
BS—British Standards Institution
CEN—European Committee for Standardization
CFR—Code of Federal Regulations
CO_2—carbon dioxide
DOT—U.S. Department of Transportation
EEBA—emergency escape breathing apparatus
EN—European standard
FRA—Federal Railroad Administration
FRSA—the former Federal Railroad Safety Act of 1970, repealed and reenacted as positive law primarily at 49 U.S.C. ch. 201
HMIS—Hazardous Materials Information System
IDLH—immediate danger to life or health or immediately dangerous to life or health
IFRA—Initial Regulatory Flexibility Analysis
ISEA—International Safety Equipment Association
ISO—International Organization for Standardization

LBIA—the former Locomotive (Boiler) Inspection Act, repealed and reenacted as positive law in 49 U.S.C. 20701–20703
LPG—liquefied petroleum gas
NIOSH—National Institute for Occupational Safety and Health
NPRM—notice of proposed rulemaking
NS—Norfolk Southern Railway Company
NTSB—National Transportation Safety Board
O_2—Oxygen
OMB—Office of Management and Budget
OSHA—Occupational Safety and Health Administration
PHMSA—Pipeline and Hazardous Materials Safety Administration
PIH material—poison inhalation hazard material
ppm—parts per million
PTC—positive train control
RCO—remote control operator
RFID—radio frequency identification
RIA—Regulatory Impact Analysis
RSIA—Rail Safety Improvement Act of 2008, Public Law 110–432, Division A
SBA—Small Business Administration
SCBA—self-contained breathing apparatus
SCSR—self-contained, self-rescuer
SNPRM—supplemental notice of proposed rulemaking
T&E employees—train and engine service employees
UP—Union Pacific Railroad Company
UTU—United Transportation Union

Table of Contents

I. Executive Summary

A. Purpose of Regulatory Action

After railroad worker fatalities resulted from the inhalation of chlorine gas following rail accidents in 2004 and 2005, NTSB issued a recommendation that FRA require railroads to provide emergency escape breathing apparatuses (EEBAs) to their locomotive crewmembers.[1] Subsequently, in October 2008, Congress enacted the RSIA.[2] Section 413 of the RSIA mandated that FRA issue regulations requiring railroads to provide EEBAs, and training in their use, for train crews in the locomotive cabs of any freight train transporting a hazardous material in commerce that would present an inhalation hazard in the event of a release. The purpose of this final rule is to respond to that statutory mandate, and it also responds to NTSB Safety Recommendation R–05–17.[3]

FRA first issued an NPRM responsive to the mandate of section 413 in October 2010.[4] Based on the cost-benefit analysis in the NPRM, and the comments received in response to the NPRM, FRA issued a guidance document[5] rather than a final rule. FRA intended for railroads to use the guidance document to develop EEBA programs to protect railroad employees involved in transporting hazardous materials posing an inhalation hazard. However, NTSB found that the guidance document did not satisfy its recommendation, and the statutory mandate remained in place. FRA then issued an SNPRM, with some revisions to the NPRM, on March 22, 2023, to open the matter again to public comment. Having considered the public comments on the SNPRM, FRA is promulgating this final rule governing the provision of EEBAs as required by statute.

B. Summary of Major Provisions

This final rule amends subpart C of 49 CFR part 227 to require any freight railroad to provide a covered employee an appropriate atmosphere-supplying EEBA when occupying a locomotive cab of a train transporting a hazardous material that would pose an inhalation hazard if released during an accident. Employees covered under this final rule include train employees, their supervisor, a deadheading employee, and any other employee designated by the railroad who is in the cab of a locomotive. This this final rule addresses the inhalation hazards associated with the hazardous materials that PHMSA identifies as ''materials poisonous by inhalation,'' which are commonly referred to as ''PIH materials'' and are defined by PHMSA's Hazardous Materials Regulations as: (1) a gas meeting the defining criteria in 49 CFR 173.115(c) (*i.e.,* Division 2.3—Gas poisonous by inhalation) and assigned to Hazard Zone A, B, C, or D in accordance with 49 CFR 173.116(a); (2) a liquid, other than a mist, meeting the defining criteria regarding inhalation toxicity in 49 CFR 173.132(a)(1)(iii) and assigned to Hazard Zone A or B in accordance with 49 CFR 173.133(a); or (3) any material identified as an inhalation hazard by a special provision in column 7 of the table in 49 CFR 172.101.[6]

This final rule requires railroads that transport a PIH material on the general railroad system of transportation to establish and carry out programs for: selection, procurement, and provision of EEBAs; inspection, maintenance, and replacement of EEBAs; and instruction of employees in the use of EEBAs. Railroads are required to identify individual employees or positions to be

[1] NTSB Recommendation R–05–17. *https://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0504.pdf.*

[2] Public Law 110–432, Div. A, 122 Stat. 4848, October 16, 2008 (49 U.S.C. 20166).

[3] Collision of Norfolk Southern Freight Train 192 With Standing Norfolk Southern Local Train P22 With Subsequent Hazardous Materials Release at Graniteville, South Carolina, January 6, 2005, which is posted at *https://www.ntsb.gov/investigations/AccidentReports/Reports/RAR0504.pdf.*

[4] 75 FR 61386 (Oct. 5, 2010).

[5] Federal Railroad Administration Guidance for Developing an Atmosphere-Supplying Emergency Escape Breathing Apparatus Program (Dec. 2016). *https://railroads.dot.gov/elibrary/federal-railroad-administration-guidance-developing-atmosphere-supplying-emergency-escape.*

[6] 49 CFR 171.8.

placed in their general EEBA programs so that a sufficient number of EEBAs are available and to ensure that the identified employees or incumbents of the identified positions know how to use the devices. This final rule requires railroads to provide for storage of EEBAs in locomotive cabs to enable employees to access the apparatus quickly in the event of a release of a hazardous material that poses an inhalation hazard.

Because the new regulation is being placed in 49 CFR part 227, noncompliance with these regulations may trigger enforcement action and penalties as described in 49 CFR 227.9. FRA is also making conforming changes, minor corrections, and updates to some of the existing provisions of part 227. Further, FRA is removing the provision at 49 CFR 227.7 on the preemptive effect of part 227 as it is unnecessary because it is duplicative of statutory law at 49 U.S.C. 20106 and case law. *See Napier* v. *Atlantic Coast Line R.R.,* 272 U.S. 605, 613; 47 S.Ct. 207, 210 (1926).

C. Costs and Benefits

FRA analyzed the economic impact of this final rule. FRA estimated the costs to be incurred by railroads and the qualitative benefits of fewer injuries to crewmembers from PIH material releasing after an accident/incident.

This final rule requires that a railroad provide an EEBA for each covered employee in a locomotive cab on a freight train transporting any PIH material. These EEBAs will provide neck and face coverage with respiratory protection for the covered employees. Railroads must also ensure that the equipment is maintained and in proper working condition. Finally, railroads are required to train covered employees on the use of the EEBAs. The main objective of this final rule is to protect covered employees from the risk of exposure to PIH materials while the employees are in the locomotive cab or escaping from a hazardous materials release posing an inhalation hazard.

Details on the estimated costs of this final rule can be found in the Regulatory Impact Analysis (RIA), which FRA has prepared and placed in the docket (FRA–2009–0044). The RIA presents estimates of the costs likely to occur over the first 10 years of the final rule. The analysis includes estimates of costs associated with the purchase of EEBAs and installation, employee training, and recordkeeping.

FRA has estimated costs for three options that are permissible under the final rule. These include:

- *Option 1:* Employee Assignment—EEBAs are assigned to all covered employees and considered part of their equipment.
- *Option 2:* Locomotive Assignment—EEBAs are assigned to and kept in locomotives.
- *Option 3:* Equipment Pooling—EEBAs are pooled at rail yards and kept in storage lockers where employees would check-in and check-out the EEBA when PIH is being hauled.

For all three options, FRA developed estimates using a closed-circuit EEBA.[7] For the ''Employee Assignment'' option, FRA estimates that the costs associated with issuing each T&E employee (with an estimated 60,000 T&E employees) with an EEBA as their own personal equipment. The ''Locomotive Assignment'' option would require installing EEBA devices in all locomotives in a railroad's fleet, regardless of whether a locomotive is part of a train that is transporting PIH material. There are approximately 24,000 locomotives owned by Class I railroads, and FRA estimates that at least three apparatuses would have to be installed in each locomotive, one apparatus each for the conductor, the engineer, and an additional covered employee. In the ''Equipment Pooling'' option, FRA considered only having EEBAs provided in trainsets that were transporting PIH. EEBAs would be brought on board after a determination is made on a case-by-case basis.

FRA estimates the 10-year costs of the final rule to be between $27.1 million to $91.9 million, discounted at 7 percent. The following table shows the total costs of this final rule, over the 10-year analysis period.

Total 10-Year Costs (2021 Dollars) [8]

Category	10-Year cost ($)	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Option 1: Employee Assignment	92,327,892	79,247,309	86,066,845	11,283,034	10,089,660
Option 2: Locomotive Assignment	107,153,842	91,909,968	99,855,523	13,085,912	11,706,114
Option 3: Equipment Pooling	33,546,542	27,116,550	30,415,557	3,860,787	3,565,631

The benefits associated with this final rule are qualitative in nature and relate to the prevention of causalities and injuries. This rule is expected to improve railroad safety by ensuring that all covered employees in locomotives on freight trains transporting PIH material can safely vacate the exposed area if a PIH material release were to occur. The primary benefits include heightened safety for covered employees and, as a result, earlier awareness/notification to the public of any catastrophic release of a PIH material. Implementation of this rule should mitigate the injuries to covered employees from PIH material releasing after an accident/incident.

II. Statutory Authority

Section 413 of the RSIA mandates that the Secretary of Transportation (Secretary) adopt regulations requiring railroads to provide EEBAs for the train crews in the locomotive cabs of any freight train transporting a hazardous material in commerce that would present an inhalation hazard in the event of a release. Specifically, the statute instructs the Secretary to prescribe regulations requiring railroads to: (1) ensure that EEBAs affording suitable ''head and neck coverage with respiratory protection'' are provided ''for all crewmembers'' in a locomotive cab on a freight train transporting ''hazardous materials that would pose an inhalation hazard in the event of a release;'' (2) provide a place for convenient storage of EEBAs in the locomotive that will allow ''crewmembers to access such apparatus quickly;'' (3) maintain EEBAs ''in proper working condition;'' and (4) provide crewmembers with appropriate instruction in the use of EEBAs. The Secretary has delegated the responsibility to carry out his responsibilities under this section of the RSIA to the Administrator of FRA. 49

[7] A closed-circuit EEBA is a device designed for use as respiratory protection during entry into hazardous atmospheres that can be immediately dangerous to life and health and are described as an apparatus of the type in which the exhaled breath is rebreathed by the wearer after the CO_2 has been effectively removed and oxygen concentration restored to suitable levels.

[8] Numbers in this table and subsequent tables may not sum due to rounding.

CFR 1.89(b). Additionally, FRA is issuing this final rule under the authority of 49 U.S.C. 20103 and 20701–20703, as delegated to the Administrator of FRA pursuant to 49 CFR 1.89(a).

III. Background

A. Accident History and NTSB Recommendation R–05–17

As noted in the 2010 NPRM, historical data suggests limited train crew injuries and fatalities related to the catastrophic release of a PIH material; in the last decade (2013 to 2022), there were no PIH-related fatalities of, or injuries to, T&E personnel.

While rail accidents involving the release of PIH materials are rare; as demonstrated by the June 2004 rail accident in Macdona, Texas, and the January 2005 accident in Graniteville, South Carolina, such accidents can be deadly to both the crew members involved and others in the vicinity. Both the Macdona and Graniteville accidents involved the release of a PIH material (chlorine) and both accidents resulted in the deaths of crewmembers.

The collision near Macdona occurred on June 28, 2004. According to the NTSB's report,[9] a westbound freight train traveling on the same main line track as an eastbound freight train struck the midpoint of the 123-car eastbound train as it was leaving the main line to enter a parallel siding. The collision derailed the 4 locomotive units and the first 19 cars of the westbound train as well as 17 cars of the eastbound train. As a result of the derailment and pileup of railcars, the 16th car of the westbound train, a pressure car loaded with liquefied chlorine, was punctured. Chlorine escaping from this car immediately vaporized into a cloud of chlorine gas that engulfed the accident area to a radius of more than 700 feet. Three people, including the conductor of the westbound train and two local residents, died as a result of chlorine gas inhalation.

The Graniteville accident occurred on January 6, 2005, when a freight train encountered a switch that had been improperly lined. The improperly lined switch diverted the train from the main line onto an industry track. Once on the industry track, the train struck an unoccupied, parked train. The collision resulted in the derailment of two locomotives and 16 freight cars on the diverted train, as well as the locomotive and one of the two cars of the parked train. There were three tank cars containing chlorine among the derailed cars on the diverted train. One of the cars containing chlorine was breached causing a release of chlorine gas, which resulted in the train engineer and eight other people dying from chlorine gas inhalation.[10]

Following the Macdona and Graniteville accidents, the NTSB issued Safety Recommendation R–05–17 to FRA recommending that FRA determine the most effective methods of providing emergency escape breathing apparatus for all crewmembers on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of unintentional release, and then require railroads to provide those breathing apparatus to their crewmembers along with appropriate training.

B. FRA Sponsored Study

In response to NTSB Safety Recommendation R–05–17, FRA commissioned a study of EEBAs in cooperation with the railroad industry and railroad labor organizations. As part of the study, FRA compiled factual information, performed technical, risk, and economic analyses, and made recommendations on ''the use of [EEBAs] by train crews who may have exposure to hazardous materials [that] would pose an inhalation hazard in the event of unintentional release.'' The study, published in 2009, provided information and recommendations on the use of EEBAs by train crews who may be exposed to hazardous materials that pose inhalation hazards. The study concluded that railroads should consider using EEBAs on trains transporting hazardous materials that pose an inhalation hazard.[11] Part of the preamble to this final rule draws from the study; however, after further consideration of the issues involved and consultation with representatives of the railroad industry and railroad labor organizations (as discussed under ''Section VII. Information and Recommendations Provided by the Railroad Industry and Railroad Labor Organizations after the Study''), FRA has come to different conclusions on a number of matters, including the minimum breathing time that EEBAs should provide, the analysis of different methods of distribution of the devices, and the costs and benefits of various EEBA alternatives.

C. FRA's 2016 Guidance for Developing an EEBA Program

In December 2016, FRA published, in the absence of a final rule, Guidance for Developing an EEBA Program.[12] This provided guidance to railroads for developing and implementing an individualized EEBA program to protect their crewmembers. The guidance highlights factors to consider when selecting an appropriate EEBA and explains various components to evaluate when developing an EEBA program. However, the statutory mandate remains in place, and NTSB found that the Guidance did not satisfy its recommendation. In addition, FRA is unaware of the Guidance leading to any railroad developing an EEBA program or making EEBAs generally available to their crewmembers.

IV. Selection of the Appropriate EEBA by Railroads

As explained in the 2010 NPRM, EEBAs are ''respirators'' and generally there are two different types of respirators: air-purifying and atmosphere-supplying. Air-purifying respirators remove specific air contaminants by passing ambient air through an air-purifying element, such as an air-purifying filter, cartridge, or canister. Atmosphere-supplying respirators supply breathing air from a source independent from the ambient atmosphere. Types of atmosphere-supplying respirators include airline supplied-air respirators and SCBA units. Based on the factors presented below, FRA is requiring an atmosphere-supplying respirator that provides adequate head and neck protection as well as giving sufficient time for its user to escape an IDLH atmosphere.[13]

In the 2010 NPRM, FRA noted that it was aware of three main organizations that had promulgated standards governing the use and maintenance of respirators—NIOSH, OSHA, and the ISO.[14] Since issuance of the 2010 NPRM, FRA has become aware of a

[9] ''Collision of Union Pacific Railroad Train MHOTU–23 With BNSF Railway Company Train MEAP–TUL–126–D With Subsequent Derailment and Hazardous Materials Release, Macdona, Texas, June 28, 2004,'' Railroad Accident Report NTSB/RAR–06/03, Washington, DC.

[10] ''Collision of Norfolk Southern Freight Train 192 With Standing Norfolk Southern Local Train P22 With Subsequent Hazardous Materials Release at Graniteville, South Carolina, January 6, 2005,'' Railroad Accident Report NTSB RAR–05/04, Washington, DC.

[11] *See* ''Emergency Escape Breathing Apparatus,'' FRA Office of Research and Development, Final Report, May 2009, which is posted at *https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/1419/ord0911.pdf.*

[12] Federal Railroad Administration Guidance for Developing an Atmosphere-Supplying Emergency Escape Breathing Apparatus Program (Dec. 2016). *https://railroads.dot.gov/elibrary/federal-railroad-administration-guidance-developing-atmosphere-supplying-emergency-escape.*

[13] NIOSH defines an IDLH as ''an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.'' *See* 29 CFR 1910.134(b).

[14] 75 FR 61386, 61390 (Oct. 5, 2010).

fourth organization, CEN, that has also developed two relevant standards.

As explained in the 2010 NPRM, NIOSH, located within the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services, worked with government and industry partners to develop certification standards for respirators. The NIOSH regulations, codified at 42 CFR part 84, establish the requirements for NIOSH certification of respirator equipment. NIOSH has also developed information on safe levels of exposure to toxic materials and harmful physical agents and issued recommendations for respirator use.

ISO has also established standards for respirator maintenance and use. ISO is a network of national standards institutes in 162 countries, including the United States, through the American National Standards Institute. ISO develops international standards to assist in ensuring the safe performance of a wide range of EEBAs. While ISO is not a government organization, it works to establish performance standards that have scientific and technological bases while ensuring that products, falling within its purview, are safe and reliable for consumers. The organization has promulgated ISO 23269–1:2008, ''Ships and marine technology—Breathing apparatus for ships—Part 1: Emergency escape breathing devices (EEBD) for shipboard use, First Edition (2008–02–01).'' While ISO 23269–1:2008 is directed towards EEBAs on ships and marine technology, the standard can be reasonably transferred to the railroad environment. ISO 23269–1:2008 establishes performance specifications for EEBAs that are intended to provide air or oxygen to a user to facilitate escape from accommodation and machinery spaces, similar to a locomotive cab, with a hazardous atmosphere.[15]

CEN serves a similar purpose as ISO in that it develops consensus standards for European countries. In creating these standards, CEN relies on the input of technical experts, business and consumer groups, and other societal interest organizations. Additionally, there is a measure of interconnectedness between the ISO and CEN, as CEN has entered into a cooperative agreement with ISO to avoid duplicative standards. In the area of escape respirators, CEN has developed two standards that railroads could use to identify an appropriate EEBA to provide to an employee. The first standard establishes requirements for approving closed-circuit escape respirators, *see* BS EN 13794:2002, ''Respiratory Protective Devices—Self-Contained, Closed-Circuit Breathing Apparatus for Escape—Requirements, Testing, Marking (November 2002),'' while the second standard establishes requirements for approving open-circuit escape respirators, *see* BS EN 1146:2005, ''Respiratory Protective Devices—Self-Contained, Open-Circuit Compressed Air Breathing Apparatus Incorporating a Hood for Escape—Requirements, Testing, Marking (February 2006).'' While BS EN 13794:2002 and BS EN 1146:2005 are standards created for the European market, FRA finds that compliance with either standard would be adequate to establish the reliability of a device, subject to the provisions of this regulation, specifically, 49 CFR 227.203, which is discussed in detail below. *See* VIII. Public Comment on the NPRM, with FRA's Response and IX. Section-by-Section Analysis.

Additionally, OSHA, located within the U.S. Department of Labor, is responsible for developing and enforcing general workplace safety and health regulations related to respiratory protection. In furtherance of this responsibility, OSHA has promulgated extensive regulations governing the maintenance, care, and use of respirators of all types, including emergency escape devices. *See* 29 CFR 1910.134.

In drafting this final rule, FRA considered the comments submitted in response to the SNPRM and the requirements of both Federal agencies (NIOSH and OSHA) as well as the ISO and EN standards to assist in determining the possible types of EEBAs that may be used by railroad employees covered under this rule. To determine which type or types of EEBAs are appropriate, FRA has looked to the comprehensive selection process for respirators developed by NIOSH.[16] For purposes of EEBAs deployed in the railroad environment, the two major NIOSH factors to consider in selecting a respirator are to determine whether the respirator is intended for: (1) use in an oxygen-deficient atmosphere (*i.e.,* less than 19.5 percent O_2); and (2) use in, entry into, or escape from, unknown or IDLH atmospheres (*e.g.,* an emergency situation).

FRA's investigation into the Graniteville accident found that the concentration of the toxic chlorine cloud over the accident site area was estimated to be approximately 2,000 parts per million (ppm).[17] OSHA classifies chlorine as having an IDLH level of 10 ppm. FRA roughly estimated the distance between the final resting spot of the breached chlorine tank car in relation to the train crew, as well as the wind speed and size of breach, to determine that the chlorine plume reached the crew within two minutes. The coroner's report on the eight fatalities to persons who were not railroad employees in the Graniteville accident indicated that the primary cause of death was asphyxia, or lack of oxygen. The coroner listed the engineer's primary cause of death as lactic acidosis. Exposure to chlorine gas was attributed as the secondary cause of all deaths in the accident. Under the circumstances presented, it appears that both NIOSH selection criteria were met. There may have been an oxygen-deficient atmosphere, and there certainly was toxic-gas concentration exceeding IDLH levels.

The Graniteville accident demonstrated that railroad hazardous material incidents (meaning collisions, derailments, or other train accidents) involving the catastrophic loss of certain PIH materials have the potential to release IDLH concentrations and/or displace oxygen very quickly without the crew's knowledge. In such circumstances, the crew may need to respond to an incident by donning their EEBAs even before assessing the damage caused by an accident. Considering the variables associated with the transportation of hazardous materials via rail and the potential hazards that exist, FRA is, based on the NIOSH selection criteria, proposing to require that railroads provide an escape-type respirator to covered employees.

The single function of escape-type EEBAs is to allow sufficient time for an individual working in a normally safe environment to escape from suddenly occurring respiratory hazards. Given this function, the selection of the device does not rely on assigned protection factors designated by OSHA.[18] Instead,

[15] However, as explained below, FRA believes that the minimum breathing capacity allowed by ISO 23269–1:2008, which is 10 minutes, is insufficient for the anticipated use in a railroad environment. As a result, the proposed rule requires a minimum breathing capacity of 15 minutes, which would be equally applicable to EEBAs certified under the requirements of NIOSH. *See* 42 CFR part 84, or ISO 23269–1:2008.

[16] *https://www.cdc.gov/niosh/docs/2005-100/default.html.*

[17] *See* R.L. Buckley, Detailed Numerical Simulation of the Graniteville Train Collision, Savannah River National Laboratory, Report WSRC–MS–2005–00635 October 2005.

[18] ''Assigned protection factor'' means the level of safety that a respirator or a class of respirators is expected to provide to employees. Assigned protection factors were developed by OSHA to

Continued

these escape-type respirators are selected based on a consideration of the time needed to escape in the event of IDLH or oxygen-deficient conditions.

Pursuant to statutory requirements, and as proposed in the 2010 NPRM and 2023 SNPRM, this final rule would require providing a device with head and neck coverage. Escape-type SCBA devices are commonly used with full-face pieces or hoods. Such devices are usually rated from 3- to 60-minute units depending on the supply of air. The following two types of atmosphere-supplying SCBA would satisfy the protection requirements of this regulation:

• *Open-Circuit SCBA.* These are typically classified as positive pressure, open-circuit systems whereby the user receives (inhales) clean air with 21 percent O_2 from a compressed air cylinder worn with a harness on the back. The user's exhaled breath contains significant amounts (15 percent) of unused oxygen that is vented to atmosphere. Because much of the user's exhaled breath vents to atmosphere, the size of open-circuit systems is larger than that of closed-circuit systems. Open-circuit SCBA systems may employ full face masks or hoods and typically require an airtight seal against the head, face, or aural/nasal area.

• *Rebreathers.* These can be positive-pressure or negative-pressure systems. Classified as closed-circuit O_2 systems, rebreathers perform as their name implies. The user rebreathes his or her breath. A chemical scrubber removes the CO_2 from the user's breath and makes up metabolized O_2 from a small bottle of compressed 100-percent O_2. Because the user is rebreathing his or her exhaled air containing 15 percent oxygen, a rebreather is four times more efficient than an open-circuit system. As a result, such systems are capable of either lasting much longer than open-circuit systems (if size were comparable) or providing the same breathing duration as an open-circuit system but in a smaller package. Rebreathers may be employed with full-face masks or hoods. Negative pressure rebreathers do not require a tight seal.

First responders (such as firefighters) commonly use open-circuit positive pressure SCBA systems for entering the scene of an emergency event. However, such devices may not be best situated to the railroad environment. In addition to being heavy and cumbersome from incorporating a large, compressed air cylinder mounted to a harness, they also commonly incorporate use of a full-face piece. Depending on the program developed by each railroad, the incorporation of a full-face piece may be a logistically and economically difficult undertaking. To be effective, a full-face piece requires an airtight seal around the user's face, which means that each user must be personally fitted for the device. It also means the user must be cleanly shaven or otherwise free of excessive facial hair. The enforcement of such a requirement would be difficult at best.

FRA believes that hoods provide a useful alternative to full-face masks while protecting the face and neck. Hoods are universal fitting devices and can be used with open and closed-circuit SCBAs. Because they are universal fitting, hoods do not require personally fitting the user, and hoods operate efficiently regardless of most eyewear, facial features, or hair. Significantly, hoods also allow the wearer to communicate while using the SCBA.

Experience has shown that a plume of hazardous material can travel quickly. As a result, it is vitally important that the train crew has adequate breathing time available to allow each member to move a significant distance from the site while being protected from the ambient atmosphere. Because such incidents will often result from a collision, as was the case in Macdona and Graniteville, consideration should be given to those situations where additional time may be used to assist or extricate fellow crewmembers that may be hurt or trapped. For example, if it takes 10 minutes to assist a fellow crewmember and each is wearing a 15-minute open-circuit respirator, each crewmember is left with five minutes to escape from any plume that may be present. Moreover, often individuals will have a tendency to breathe rapidly and deeply in stressful situations, which will shorten the breathing time available in a respirator. In selecting an EEBA with sufficient breathing time, each railroad should take into consideration these factors and others that contribute to the ''Murphy's Law'' effects of accidents such as an incident occurring at night or in tight terrain. As a result, FRA is proposing to require that EEBAs being provided to covered employees have at least a 15-minute minimum breathing capacity. Further, FRA encourages railroads to consider EEBAs with a longer breathing capacity, to provide an extra margin for escape under stressful circumstances.

V. Provision of EEBAs to Covered Employees

FRA has decided not to mandate a specific method by which railroads must provide EEBAs to covered employees. *See* discussion of covered employees at IX. Section-by-Section Analysis of §§ 227.201 and 227.211, below. FRA recognizes that there are differing methods for effectively distributing suitable EEBAs among a railroad's covered employees, its locomotive fleet, or both. Each of these options has advantages and disadvantages. Given these factors, FRA believes that the regulation most efficiently serves the RSIA mandate by allowing each railroad to choose the method of distribution that works for it as long as: (1) covered employees are provided with a suitable device while they are in the locomotive cab of a freight train transporting a PIH material; and (2) transportation of a covered hazardous material is not unduly delayed, thereby posing additional risk, particularly where the covered train (or a locomotive intended to be used to haul a covered train) is interchanged from one railroad to another. *See* VII. Information and Recommendations Provided by the Railroad Industry and Railroad Labor Organizations after the Study, for relevant remarks. In the following paragraphs, FRA discusses five options available to railroads for providing EEBAs to covered employees.

Under this final rule, EEBAs may be treated as part of an employee's permanently issued items, similar to eye protection, radios, and lanterns. This method of distribution would allow railroads to permanently issue an EEBA to each potentially covered employee (*e.g.,* for a freight railroad that regularly hauls one or more PIH materials, possibly all of its train employees). The device would be in the user's control at all times, and each individual would be responsible for having the device in his or her possession. The carrier would still be responsible for ensuring the state of the equipment through an inspection program; however, the company would be relieved of most of the responsibilities for EEBA management. Theoretically, this option would tend to result in better cared for equipment and lower replacement costs. Moreover, personal assignment allows for customization of the EEBA. However, permanently issuing EEBAs to employees results in substantial costs. Over a 10-year period, total costs would be approximately $92 million. Other negative aspects of treating EEBAs as a permanently issued item include difficulty in monitoring the condition of

designate to employers the proper type of device that is required in selecting a respirator. According to OSHA, assigned protection factors are not applicable to respirators used solely for escape.

the EEBA and ensuring that the required EEBA is with the user at all times. Additionally, permanently issuing the EEBA would add to an already lengthy list of items expected to be carried by train employees.

Alternatively, EEBAs may also be permanently assigned to an individual as a dedicated personal item issued at the start of each shift and recovered at the end of each shift as part of the clock-in/clock-out process. This method allows for individual customization and allows the EEBA to be with the user at all times the user is on duty, while supporting centralized inspection and maintenance. However, the railroad may experience greater costs due to the increased size of its EEBA inventory since all train employees who have the potential to work in the locomotive cab of a freight train transporting a PIH material would require stocked EEBAs. This alternative may also create difficulties in the provision of EEBAs if the train employees who must have access to the EEBAs have more than one on-duty location.

A third option is to treat EEBAs as ''pool'' items. The EEBAs would not be assigned to a specific individual. They would be issued at the start of each shift and recovered at the end of each shift as part of the clock-in/clock-out process. This option supports centralized inspection and maintenance while minimizing number of EEBAs required, which could reduce costs substantially. FRA estimates that trains transporting PIH materials amount to approximately 0.2 percent of all train traffic, as cars carrying PIH materials are concentrated in relatively few trains. If railroads chose this option, they could stock enough EEBAs to cover 10 percent of the entire locomotive fleet for approximately $33.5 million over a 10-year period. Equipping enough EEBAs to cover 10 percent of the entire locomotive fleet should allow for every locomotive that will be part of train transporting a PIH material to be equipped with the necessary devices for each covered employee provided that the railroads exercise adequate resource management with respect to EEBAs. This would ensure that the EEBA would be with the user throughout his or her entire shift. However, railroads likely would have to allocate or build space at one or more locations (depending on the size of the railroad) to warehouse EEBAs that are not being used by covered employees. Moreover, an employee must be assigned to monitor the handing out and returning of devices. This system also may have hidden costs, such as losing the potential benefits of a sense of employee ''ownership'' if EEBAs are treated as common property.

A fourth option is to have EEBAs permanently mounted in each locomotive cab in the railroad's fleet. This method would ensure that trains transported by the railroad that include a PIH material are always adequately equipped, while supporting centralized inspection and maintenance. The negative aspects of permanently mounting the EEBA selected by the railroad in the cabs of the railroad's locomotive fleet include the increased size of the railroad's EEBA inventory if non-covered consists would transport the EEBAs and since EEBAs must be provided for worst-case crewing (including possible supernumerary personnel such as deadheading employees), increased management burden for tracking/recovery, increased management burden for item inspection and maintenance, and unavailability of customized EEBAs. Additionally, FRA has estimated that the total 10-year cost of outfitting all locomotives to be approximately $106.8 million. These estimates could be reduced if railroads opted to dedicate a portion of their locomotive fleet to service for trains transporting PIH materials, subject to balancing any impact on operating efficiencies.

As discussed in section VII. Information and Recommendations Provided by the Railroad Industry and Railroad Labor Organizations after the Study, AAR has proposed that Class I railroads interchanging locomotives with each other will provide the same type of EEBA while also using the same method of equipping the locomotive, which would expedite interchange between two Class I railroads. However, the option of permanently mounting a specific type of EEBA within each locomotive owned by a Class I railroad could create delays at interchange if the locomotives from nonparticipating railroads also are offered in interchange to Class I railroads to haul covered trains. The delay could occur if the nonparticipating railroad delivers a locomotive in interchange that either lacks an EEBA of any kind or that has an EEBA that does not conform to the type specified under the Class I railroad's general EEBA program under § 227.211.

A fifth option is for EEBAs to be temporarily mounted in the locomotive cab as the train containing a shipment of PIH material is made up. Using this option would help to minimize the number of EEBAs required, while ensuring that each consist containing a PIH material is appropriately equipped. It would also allow the railroad to cater efficiently to differing crew sizes. Drawbacks with this method include increased management burden for the initial issue of EEBAs to the consist, increased management burden for tracking/recovery, increased management burden for item inspection and maintenance, and unavailability of customized EEBAs.

FRA recognizes that these are only a few of the numerous options for the provision of EEBAs, each involving its own considerations. Any of these options (or combination of these options), including options that have not been discussed above, is acceptable under this final rule, as long as a suitable EEBA is provided by the railroad to each covered employee while they are in a locomotive cab of a covered train and the transportation of covered hazardous materials via rail is not unduly delayed.

VI. Information and Recommendations Provided by the Railroad Industry and Railroad Labor Organizations After the Study

As previously mentioned, representatives of both the railroad industry and railroad labor organizations cooperated with the FRA-sponsored study on the feasibility of providing EEBAs to train crews, the report of which was published in May 2009. AAR, UTU,[19] and BLET also exchanged information and ideas with FRA on issues related to this rulemaking, as summarized below.

In July 2009, prior to the publication of the 2010 NPRM, representatives of AAR briefed FRA with information on AAR's exploration of alternative ways by which the rulemaking mandate under section 413 of the RSIA might be carried out. AAR has also offered recommendations to FRA on issues related to this rulemaking, including the type of EEBA and the mode of providing it that AAR thought would satisfy the statutory mandate. Subsequently, in a letter to FRA dated January 13, 2010, AAR encouraged FRA to incorporate by reference a draft specification establishing guidelines for: (1) vendors of EEBAs that would be used by Class I railroads; (2) mounting EEBAs on locomotives; and (3) requiring training support.

FRA considered incorporating by reference a finalized version of AAR's specification; however, FRA has ultimately decided not to do so. Many comments raised questions about the details of the specification, and FRA

[19] UTU is now part of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART).

believes this final rule provides a clearer standard for efficiently complying with the RSIA mandate. Of course, AAR is free to rely on a final specification to normalize EEBAs among Class I railroads, as long as the specification complies with the requirements in subpart C.

Additionally, in the course of drafting the 2010 NPRM, FRA representatives met with UTU and BLET representatives on March 31, 2010, who briefed FRA on issues related to the provision of EEBAs. AAR was also in attendance at this meeting. UTU felt that EEBAs should be ''placed on all occupied locomotives which operate over a corridor where freight trains carry hazardous materials that pose an inhalation hazard in the event of a release.'' Under UTU's recommendation, each occupied locomotive would be required to have working EEBAs—even if the occupied locomotive is not part of a train carrying PIH materials—as long the locomotive is operating over a rail line that carries such materials.

During the March 31, 2010, meeting, UTU indicated that it opposed issuing EEBAs as personal items. UTU felt that adding an additional item to each train employee's required personal equipment would unnecessarily burden crewmembers. UTU was concerned with not only the added weight, but also the extra responsibility for care and maintenance that would fall to train employees in the event that EEBAs are provided as personal equipment. It contended that railroads are in a better position than the employees to maintain the devices.

Finally, UTU stressed that there must be sufficient training of train employees in the use of EEBAs. Such training would ensure that train employees would know how to use EEBAs if presented with a situation in the field where their use was required. UTU expressed a strong desire for regular, hands-on training with devices selected by the railroads to achieve these ends.

VII. Public Comment on the SNPRM, With FRA's Response

A. Introduction

FRA received 7 sets of comments on the SNPRM from 8 different entities (AAR and ASLRRA jointly submitted comments), covering a broad spectrum of interests which resulted in revisions to this final rule. These commenters included the railroad industry, a labor organization, the NTSB, and concerned individuals. In revising this final rule, FRA has considered each issue raised by the commenters, and it addresses those issues in this section.

B. Comments on the Preamble, With FRA's Response

AAR and ASLRRA argue that FRA has not adequately accounted for the costs of installation and recordkeeping associated with the managing of an EEBA program. They argue that FRA has not properly accounted for tasks such as developing and implementing testing and inspection protocols for devices, conducting scrap planning, tracking pilferage or damage, anticipating future EEBA purchases, assessing employee turnover, identifying EEBA reallocation needs, tracking wear and tear on mounting systems, and developing and implementing training for EEBA usage and management. However, FRA included these very considerations in the cost estimates presented in the SNPRM. FRA's estimates were not broken down into such granular detail, but those same administrative and management considerations were included. AAR and ASLRRA specifically point to the EEBA pooling option (the lowest cost option) as having the highest of these associated administrative costs. In response, FRA reexamined its initial administrative and management costs estimates, particularly as they relate to the EEBA pooling option, to ensure they are being properly accounted for and concluded the original cost estimates were correct.

AAR and ASLRRA note that the hazmat exposure resulting from the 2014 Texas incident addressed in the SNPRM () was to battery acid, which is not a PIH or an asphyxiant. FRA has examined this incident and concluded that AAR and ASLRRA are correct; this was not a hazmat release where an injury due to contact with the hazmat would have been prevented by an EEBA as contemplated in this rulemaking. FRA has also reexamined the other incident (2012, New Jersey) referred to in the SNPRM and arrived at the same conclusion. Accordingly, FRA has removed both incidents from its calculation of this rulemaking's benefits. AAR and ASLRRA also state that FRA does not address effective usage rates for EEBAs when determining the costs and benefits. However, usage rates have no impact on the costs and since FRA has removed the two above incidents the effective usage rate has no impact on the estimated benefits either.

AAR and ASLRRA argue that ''[r]ailroads are safer now than they were when the RSIA was passed'' stating that since 2008 there has been a ''23 percent decrease in the mainline accident rate'' and that ''hazmat accident rates have declined by 55 percent'' in the same period. They contend that ''operational changes related to the implementation of Positive Train Control, speed restrictions that are required for trains transporting poisonous-inhalation-hazard (PIH) materials, and improvements to tank cars have substantially reduced the likelihood of a PIH material release.'' They also note that in ''the SNPRM, FRA adjusts its 10-year benefit estimate downward from $13.5 million to $63,720'' and that this ''amounts to an annualized societal benefit estimate of only $6,138.'' They argue that FRA should not advance this EEBA regulation and instead put its resources toward continuing to minimize the number and consequence of rail accidents involving hazardous materials. In response to these comments, FRA notes that the RSIA mandates that the Secretary adopt regulations requiring railroads to provide EEBAs for train crews occupying locomotive cabs of any freight train transporting a hazardous material in commerce that would present an inhalation hazard in the event of a release. Given this statutory mandate, FRA is issuing a rule that not only considers the costs, but also provides a mechanism to enhance safety for railroad employees transporting hazardous materials presenting an inhalation hazard if a release occurs. Moreover, FRA has recently undertaken a number of rulemaking initiatives in a variety of disciplines, including re-engineering tank cars (in cooperation with PHMSA), PTC, and amendments to operating rules, all designed to improve the safety of railroad operations, and thus reduce the rate of incidents, including those involving hazardous materials. As with all complex systems, however, there are occasions when failures do occur. This final rule provides an additional element of protection for covered employees should an accident with a PIH release occur in the future. AAR and ASLRRA also suggest that FRA has no reasonable basis for issuing a final rule if, in FRA's analysis, the costs exceed the benefits. However, a lack of quantifiable (*i.e.,* monetized) benefits, or quantifiable costs exceeding quantifiable benefits, is not dispositive for an agency's rulemaking analysis. Indeed, OMB Circular A–4 directs agencies to describe benefits qualitatively when it is not possible to quantify or monetize all of a rule's important benefits. Agencies should also take other factors, such as statutory mandates, into account when comparing the anticipated costs and benefits of a rulemaking. Here, Congress, through the RSIA, established

a statutory mandate to promulgate regulations that require railroads to provide EEBAs for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release and that alone provides a reasonable basis for issuing this final rule.

The individual commenter also states that a new cost-benefit analysis should be conducted. However, FRA already conducted a new cost-benefit analysis in the SNPRM and again analyzed the costs and benefits in this final rule. The same individual commenter also questions whether the addition of EEBAs to locomotive cabs will increase the risk of fire. FRA has examined this issue and found that EEBAs do not themselves present a fire risk and that their inclusion in a locomotives cab will not increase its flammability.

AAR and ASLRRA also commented on the deadlines for compliance which are 12, 12, and 18 months respectively for Class I, II, and III railroads. AAR and ASLRRA argue that the timeline of the 2010 NPRM (24, 30, and 36 months respectively) is more appropriate. However, given the length of time since the publication of the 2008 RSIA mandate, 2010 NPRM, FRA's issuance of guidance in 2016, and the 2023 SNPRM, railroads have been on notice about the need to provide EEBAs and the lengthy timelines from the 2010 NPRM are no longer necessary.

AAR and ASLRRA's comments address concerns about the financial impact of the RSIA mandate on small entities in the railroad industry, which they contend lack pricing power to pass on the costs of this rule to their customers and have small capital budgets necessitating that other work, such as track maintenance, will have to be deferred to pay for it. AAR and ASLRRA contend that while the initial costs for Class III railroads may indeed be modest, the ongoing costs for inspection, maintenance, replacement, and enforcement penalties will result in permanent ongoing expenditures that will be particularly impactful on small railroads as they are likely to: (1) focus on the purchase of EEBAs based on crew terminals and number of customers, (2) face higher costs than estimated and have limited options to benefit for bulk orders; and (3) face disproportionately high training costs. AAR and ASLRRA estimate that the total compliance present costs [20] (at 7%) to be borne by Class II and III railroads at over $6.6 million, or over $945,000 on an annualized basis. For just Class III railroads, ASLRRA projects total present costs (at 7%) to amount to almost $4.9 million, with the individual annualized cost to each of the 110 impacted railroads estimated to be $6,333 per year, or more than four times the cost estimated in the SNPRM. As such, AAR and ASLRRA ask that FRA exercise its discretion, in this particular instance, to provide a ''de minimis'' exception for railroad operations, similar to what FRA provided for PTC requirements, to exempt Class II and III railroads from the requirement to provide EEBAs.

While FRA understands ALSRRA's concerns, the agency is constrained by section 413 of the RSIA. Unlike with PTC, Congress did not carve out an exemption for Class II and Class III railroads from the statutory requirement. *See* section 104 of the RSIA. Instead, Congress used broad language that covers any railroad carrier transporting hazardous materials that would pose an inhalation hazard in the event of release. In light of this language, FRA cannot institute an exception for Class II and III railroads without congressional action. Notwithstanding these constraints, FRA has enacted measures to limit the costs for railroads. In particular, FRA has provided flexibility to allow railroads to pursue the most cost-effective way to provide EEBAs in accordance with the statutory requirements and this final rule. Additionally, small railroads could consider pooling resources wherever possible for requirements such as periodic training. Indeed, many small railroads are jointly owned by the same holding companies making resource pooling even easier. In light of the concerns raised above, FRA has reexamined its estimated costs for small railroads to ensure that their unique conditions are being properly accounted for and concluded they have been.

C. Section-Specific Public Comments, With FRA's Response

FRA received comments on changes to §§ 227.201(a)(1), 227.203(c), 227.207, 227.209, and 227.215 of the SNPRM.

1. Comments on § 227.201(a)(1), With FRA's Response

BRS and an individual commenter suggested that EEBAs should also be provided to employees working outside the locomotive cab such as signalmen and yard employees. In particular, BRS suggests that signalmen would benefit from EEBAs as they are among the first responders to rail accidents and would benefit from respiratory protection systems in the event of a hazardous material release.

The RSIA established a statutory mandate to promulgate regulations that require railroads to provide EEBAs ''for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release.'' If Congress had wanted the Secretary to promulgate more expansive regulations covering areas outside the locomotive cab, then it would have chosen different language requiring that FRA cover personnel in areas other than locomotive cabs, including signalmen and employees in rail yards. Since Congress did not do so, FRA does not propose to include requiring the provision of EEBAs at strategically placed locations in rail yards. Furthermore, the purpose of EEBAs is to allow railroad employees located in the cab to better escape an accident, they are not intended for use by responders. However, the rule in no way prohibits railroads from voluntarily distributing EEBAs to their employees not covered by this regulation.

AAR and ASLRRA argue that FRA has exercised discretion beyond the statutory mandate of the RSIA by requiring that persons, other than solely crewmembers, be provided EEBAs when located in the locomotive cab of an in-service freight train transporting a PIH material. FRA agrees that the RSIA's mandate is for an EEBA to be provided ''for all crewmembers.'' However, the RSIA does not limit which railroad employees in the cab of a locomotive must be provided with an EEBA and does not define crewmembers. FRA considered worst-case crewing scenarios that included possible supernumerary personnel such as supervisors and deadheading employees who might be in the locomotive cab during a PIH release and concluded that requiring the railroads provide such employees with EEBAs to be consistent with RSIA's mandate and in the general interest of employee safety.

2. Comments on § 227.203(c), With FRA's Response

AAR and ASLRRA note that § 227.203(b) of the SNPRM proposed to require railroads to use an EEBA certified by NIOSH or meeting criteria set by specified industry organizations. Therefore, AAR and ASLRRA argue no further showing of the adequacy of the EEBA should be necessary and that § 227.203(c) should be deleted. FRA disagrees because § 227.203(c) provides considerations beyond the minimum criteria required under the NIOSH, ISO, or EN standard. For example, FRA has concluded that the minimum breathing capacity allowed by ISO 23269–1:2008,

[20] AAR and ASLRRA developed this estimate using an equipment pooling approach.

which is 10 minutes, is insufficient for the anticipated use in a railroad environment. As a result, this final rule requires a minimum breathing capacity of 15 minutes. FRA concluded, by the same logic, that the considerations for head and neck protection and accommodations for eyeglasses and a range of facial features contained in § 227.203(c) are necessary even if they go beyond the NIOSH, ISO, or EN standards. FRA is therefore keeping the requirements in § 227.203(c).

3. Comments on § 227.207, With FRA's Response

AAR and ASLRRA comment that FRA goes beyond the rulemaking discretion afforded it in the RSIA in requiring pre-trip inspections of EEBAs in § 227.207(a)(1) and that such inspections would be overly burdensome. AAR suggests that FRA should rely instead on the periodic inspections required in § 227.207(a)(2).

The RSIA requires that EEBAs be maintained in proper working condition. FRA considers pre-trip inspections the most effective method of ensuring compliance with this statutory mandate because the final rule requires that an EEBA for each employee will be in the locomotive cab prior to departure. For example, FRA can envision scenarios where at least two crews could be relying on locomotive-mounted EEBAs and, absent a pre-trip inspection, the second crew would have no means to verify that the devices were present and ready for service. Such verification is essential to ensuring equipment is properly maintained. Therefore, FRA believes that the pre-trip inspection requirement is fully consistent with FRA's authority under the RSIA.

FRA also disagrees that the pre-trip inspection is an overly burdensome requirement. FRA expects that the pre-trip inspection will be a quick check to ensure that the appropriate accompaniment of EEBAs is provided and that those devices are charged to provide a minimum 15-minute breathing capacity, as well as any of other necessary checks that the manufacturer recommends. The nature of this pre-trip inspection may be as simple as visually inspecting and verifying that the case has not been tampered with and that all gauges and other indicators are in an acceptable range.

AAR and ASLRRA also oppose the recordkeeping requirements in § 227.207 for the same reasons they oppose § 227.207(a)(1) above. FRA's response is also the same; the RSIA mandates that EEBAs be maintained in proper working condition. Meeting this mandate requires some level of recordkeeping to ensure compliance. While FRA views pre-trip inspection records as necessary to ensure compliance with the RSIA mandate, it should be noted that the record of pre-trip inspections, depending on the device selected, may be as simple as the check-off/initialed card used on fire extinguishers. FRA also understands that some of the Class I carriers are considering using RFID tags to track and record the inspection of individual EEBA units. The use of this technology could possibly minimize the inspection and recordkeeping burden.

4. Comments on § 227.209, With FRA's Response

AAR and ASLRRA comment that ''there is simply no requirement in the statutory text and no functional safety rationale for FRA to require all railroad employees to be able to demonstrate knowledge of EEBA selection criteria, as proposed in § 227.209(2)(b)(6).'' FRA believes that a demonstration of knowledge of EEBA selection criteria would ensure that employees know the purpose and limitations of the selected EEBAs (minimum breathing time, that it covers the full face, etc.). However, this information is duplicative of the other training requirements in § 227.209(2)(b) and so FRA agrees with its removal.

5. Comments on § 227.215, With FRA's Response

AAR and ASLRRA comment that FRA goes beyond the rulemaking discretion afforded it in the RSIA in requiring that records be kept as required in § 227.215. The RSIA mandates that EEBAs be provided to all crewmembers in the locomotive cab of a freight train transporting a hazardous material that would pose an inhalation hazard in the event of release and that all such equipment be maintained in proper working condition. Meeting this mandate necessarily requires some level of recordkeeping to ensure compliance and § 227.215 simply lays out the reasonable requirements for keeping and making the records available.

VIII. Section-by-Section Analysis

PART 227—OCCUPATIONAL SAFETY AND HEALTH IN THE LOCOMOTIVE CAB

FRA is changing the name of the part from ''OCCUPATIONAL NOISE EXPOSURE'' to ''OCCUPATIONAL SAFETY AND HEALTH IN THE LOCOMOTIVE CAB'' in order to reflect the broader subject matter of the part. Previously, part 227 contained regulations related only to dangers from occupational noise exposure. Part 227 is the best place to put the regulations related to EEBAs because the occupational noise regulations and the EEBA regulations both concern dangers to the occupational safety and health of locomotive cab occupants. However, the inclusion of the EEBA regulations requires broadening the name of the part to accurately capture the new subject matter that is now covered in that part.

Subpart A—General

Section 227.1 Purpose and Scope

FRA amends this section to reflect the expanded purpose and scope of this part.

Section 227.3 Applicability

FRA amends this section so that paragraphs (a) and (b) apply to subpart B only and that the title mentioned, ''Associate Administrator for Safety,'' is updated to reflect the current title, ''Associate Administrator for Railroad Safety/Chief Safety Officer.'' New paragraphs (c) and (d) define the types of railroad operations to be covered by subpart C. In particular, subpart C applies to a railroad transporting an in-service freight train that carries a PIH material on track that is part of the general railroad system of transportation. *See* 49 CFR part 209, appendix A.[21] It should be noted that, with some exceptions, common carriers by railroad have a ''common carrier'' obligation to accept for rail transportation a PIH material if it is properly prepared for transportation. If a railroad accepts and transports a tank car containing a load or residue [22] of a PIH material in an in-service freight train, even if the railroad has never done so before, the railroad would become subject to this rule. FRA realizes the applicability of this rule to a company's first time transporting a PIH material in a freight train could delay the transportation of such material if the company did not voluntarily take the steps required by the rule (*e.g.,* preparation of a general EEBA program, procurement and distribution of EEBAs,

[21] As noted in the SNPRM, FRA has removed references to ''asphyxiants'' that were included in the NPRM. The SNPRM explained the reasons for not including simple asphyxiants (*i.e.,* non-PIH asphyxiants) as covered materials but invited public comment on whether they should be included. 88 FR 17302 at 17312–17313 (Mar. 22, 2023). FRA received only one comment on this issue, which was supportive of removing asphyxiants from this rule.

[22] *Residue* means the hazardous material remaining in a packaging, including a tank car, after its contents have been unloaded to the maximum extent practicable and before the packaging is either refilled or cleaned of hazardous material and purged to remove any hazardous vapors.

and instruction of employees in the program) in advance. Further, a delay related to compliance with this final rule could conflict with the railroad's duty to expedite the transportation of hazardous material, pursuant to the Hazardous Materials Regulations at 49 CFR 174.14.

Section 227.5 Definitions

The rulemaking amends this section to add definitions for key terms used in subpart C. The terms defined are set forth alphabetically. FRA intends these definitions to clarify the meaning of the terms for purposes of this part. Many of these definitions have been taken from the regulations issued by OSHA and NIOSH and are widely used by safety and health professionals, such as the definition of ''immediately dangerous to life or health (IDLH).'' A definition of ''PIH material'' is included in this final rule to ensure that the universe of materials covered by this regulation is adequately described.

Section 227.15 Information Collection

FRA amends this section to note the provisions of this part, including subpart C, that have been reviewed and approved by OMB for compliance with the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.*

Subpart B—Occupational Noise Exposure for Railroad Operating Employees

FRA is making minor corrections to this subpart. The term ''Class 1'' is removed wherever it appears and replaced with the corrected term ''Class I.'' The incorrect term appeared in, for example, § 227.103(a)(1).

Subpart C—Emergency Escape Breathing Apparatus Standards

Section 227.201 Criteria for Requiring Availability of EEBAs in the Locomotive Cab

Section 227.201(a)(1) requires that an EEBA be provided by a railroad to each of its train employees, direct supervisors of train employees, deadheading employees, and any other employees designated at the railroad's discretion and identified in writing whose duties require regular work in the locomotive cabs of in-service freight trains transporting a PIH material. The EEBA provided must have been selected in accordance with the criteria in § 227.203. Moreover, the EEBA provided shall have been inspected and determined to be in proper working condition under § 227.207.

Section 227.201(a)(2) prohibits utilizing a locomotive to transport a PIH material in an in-service freight train unless each of the employees identified in paragraph (a)(1) has access to an EEBA that was selected in accordance with § 227.203 and that has been inspected and is in proper working order pursuant to § 227.207. Paragraph (a)(2) makes clear that it is not enough for a railroad to merely issue an EEBA to its employees, *e.g.,* as a uniform item; the employee must have access to the EEBA in the cab of the covered train. For instance, it is not a defense to a violation of § 227.201(a)(2) that the railroad provided the EEBA to the employee and instructed the employee to have it while in the cab, but the employee lost or forgot it.

Section 227.201 also includes exceptions to its general requirements in paragraph (b). FRA excludes trains that contain PIH materials exclusively in intermodal containers from the requirements in this section. Further, employees who are involved in activities, such as moving a locomotive coupled to a car or group of cars containing a PIH material within a locomotive maintenance facility, or who make incidental movements for the purpose of inspection or maintenance, are also exempted from coverage.

Paragraph (c) establishes that, notwithstanding the exceptions identified in § 227.201, any employee who is found to have willfully tampered with or vandalized an EEBA will be subject to subpart C for enforcement purposes. As a result, an employee to whom the railroad is not required to provide an EEBA may become subject to this subpart by vandalizing or willfully tampering with an EEBA.

Section 227.203 Criteria for Selecting EEBAs

This section provides the requirements for selecting an EEBA. *See* general discussion at V. Selection of the Appropriate EEBA by Railroads, above. The requirements for selecting EEBAs are based on the nature and extent of the potential hazard to be faced. Due to the varying modes of toxicity and physical state of commodities carried by railroads, the selection of EEBA types is limited to those that supply a breathable atmosphere to the wearer, rather than types that simply filter out the toxic material. Filtering EEBAs cannot provide protection from gasses that can displace oxygen in the atmosphere. Filtering EEBAs approved for protection against specific materials usually are not approved for others of different chemical characteristics and generally have an upper concentration limit on their protective capabilities.

Paragraph (a) of § 227.203 requires a railroad to select an atmosphere-supplying EEBA that protects against all PIH materials (including residues of such commodities) that are being transported by an in-service freight train. To ensure that the EEBAs have met a standard set of testing criteria, paragraph (b) requires the selection of a NIOSH-certified (42 CFR part 84) or ISO-compliant (ISO 23269–1:2008) EEBA, with 15-minute minimum breathing capacity. In addition, FRA has included language in paragraph (b) to permit selection of devices that comply with BS EN 13794:2002 or BS EN 1146:2005.

To ensure that the EEBA provides adequate oxygen to allow train employees to extricate themselves from an IDLH atmosphere, FRA requires in paragraph (c)(1) that the EEBA must contain a minimum breathing capacity of 15 minutes under § 227.207(a)(1).

In paragraph (c)(2), FRA addresses head and neck protection. The EEBA selected by a railroad must facilitate escape from a hazardous atmosphere by providing a means of protecting a user's nose and throat from inhalation hazards while also protecting the user's eyes from irritation.

Section 227.205 Storage Facilities for EEBAs

This section addresses the mandate in the RSIA that the rule require railroads to ''provide convenient storage in each freight train locomotive to enable crewmembers to access such apparatus quickly.'' FRA has adapted the storage requirements promulgated by OSHA at 29 CFR 1910.134(h)(2) to this final rule.

Section 227.207 Railroad's Program for Inspection, Maintenance, and Replacement of EEBAs; Requirements for Procedures

This section requires each railroad to establish and carry out procedures intended to ensure that EEBAs required to be present in the locomotive cabs are fully functional. This section is adapted from OSHA's inspection documentation requirements. *See* 29 CFR 1910.134(h)(3)(iv). Since the EEBAs selected may have differing requirements for inspection, maintenance, and replacement, this section is, for the most part, written as a general standard. However, minimum repair and adjustment requirements also have been adapted from OSHA's regulations. *See* 29 CFR 1910.134(h)(4).

In paragraph (b), FRA requires that railroads create and maintain pre-trip and periodic inspection records and retain these records for a period of 92 days and one year, respectively. Paragraph (d) requires railroads to create and maintain an accurate record of all

turn-ins, maintenance, repair, and replacement of EEBAs required by paragraph (c) of this section, including EEBAs that are used; and retain these records for three years.

Section 227.209 Railroad's Program of Instruction on EEBAs

This section identifies the elements of the instructional program that the railroad must establish and carry out for train employees and other employees who are part of the railroad's general EEBA program under § 227.211 and will be provided with EEBAs. The elements outlined in this section are partly adapted from OSHA's regulations. *See* 29 CFR 1910.134(k). The program required by this section should be considered the minimum, and the railroads are encouraged to provide additional relevant information depending on the types of EEBAs selected.

Paragraph (b) requires that any railroad transporting a PIH material provide sufficient training to its covered employees. Such employees must be able to demonstrate knowledge of why an EEBA is necessary; how improper fit, usage, or maintenance can compromise the protective effect of an EEBA; the limitations and capabilities of the type of EEBA provided by the railroad, including the timeframe for effective use; how to deal with emergency situations involving the use of EEBAs or if an EEBA malfunctions; how to inspect, put on, remove, and use an EEBA, including the inspection of seals; procedures for maintenance and storage of EEBAs; employee responsibilities under subpart C; employee rights concerning access to records; and identification of hazardous materials that are classified as PIH materials. FRA is particularly concerned that the employees know the limitations of the EEBAs provided so that the employees can avoid circumstances that would lead to reliance on the EEBAs for conditions or time frames beyond the EEBA's capabilities.

This program may be integrated with the railroad's program of instruction on the railroad's operating rules required by 49 CFR 217.11 or its program of instruction for hazmat employees under 49 CFR 172.704. Under 49 CFR 172.704(a)(3)(ii), for example, hazmat employees (which includes crews of freight trains transporting hazardous material), must receive ''safety training'' on means ''to protect the employee from the hazards associated with hazardous materials to which they may be exposed in the workplace, including special measures the hazmat employer has implemented to protect employees from exposure.''

Paragraph (c) establishes the timing of the initial and refresher training. Initial instruction must occur no later than 30 days prior to the date of compliance with subpart C for the subject railroad. New employees must receive initial instruction either by 30 days before the applicable date of compliance with subpart C or prior to being assigned to jobs where EEBAs are required to be provided on a locomotive, whichever is later. The initial instruction must be supplemented with periodic instruction at least once every three years.

Section 227.209(d) requires railroads to create and maintain an accurate record of employees instructed in compliance with § 227.209; and retain these records for at least three years.

Section 227.211 Requirement To Implement a General EEBA Program; Criteria for Placing Employees in the General EEBA Program

In this section, FRA requires railroads subject to subpart C to adopt and comply with a general EEBA program to ensure that the selection and distribution of the EEBAs is done in a technically appropriate, sustainable manner and supported by a comprehensive set of policies and procedures, as discussed in detail at section IV. FRA-Sponsored Study and section V. Selection of the Appropriate EEBA by Railroads, above. Many of the procedures will likely be used as a basis for aspects of the required instructional program.

Paragraph (b)(1) requires that each railroad's general program identify the railroad's EEBA manager by title and requires that the EEBA manager is qualified to oversee the program.

Section 227.211(b)(4) requires the following individuals to be placed in the railroad's general EEBA program: (1) employees of railroads subject to this subpart who perform service subject to the provisions of the hours-of-service law governing ''train employees,'' *see* 49 U.S.C. 21103, in the locomotive cabs of freight trains that transport a PIH material; (2) the direct supervisors of these train employees; and (3) any employees who deadhead in the locomotive cabs of such trains. The term ''train employee'' refers to employees who are engaged in functions traditionally associated with train, engine, and yard service; for example, engineers, conductors, brakemen, switchmen, and firemen. *See* 49 U.S.C. 21101(5); 49 CFR part 228, appendix A; and 74 FR 30665, June 26, 2009.

A railroad may also identify other employees and designate them in writing to be included in its general EEBA program. In making this assessment, the railroad should consider an employee's work over the period of a year. In doing so, the railroads must consider how they use their workforces, *i.e.,* review the work that their employees perform, determine which employees will occupy the cab of the locomotive of an in-service freight train and therefore experience the risk of the release of an inhalation-material from the consist, and then place those employees in the general EEBA program.

Given the nature of the railroad industry, FRA is aware that some of these employees may not always work in the cab. Due to longstanding labor practices in the railroad industry concerning seniority privileges and concerning the ability of railroad employees to bid for different work assignments, these railroad employees are likely to change jobs frequently and to work for extended periods of time on assignments that involve duties outside the cab. For example, an employee might start the year in a job that involves mostly outside-the-cab work, spend three months working primarily inside the cab, and then return to outside-the-cab work for the rest of the year. In this type of situation, these regulations govern the exposure of this employee throughout the year despite the fact that the employee only spent three months inside the cab. This employee is covered by this part because he or she spent time, no matter how little, in a locomotive cab where the use of an EEBA may be required. As a result, the railroad must ensure that the employee is properly instructed in how to inspect and use an EEBA and provide an EEBA for those time periods in which the employee is serving as a train employee, as a direct supervisor of a train employee, or in a capacity that the railroad has determined, in its discretion and designated in writing, should be provided an EEBA while any of these individuals is working in the cab of the locomotive of an in-service freight train transporting a PIH material.

Note that placement of an employee in the railroad's general EEBA program means different things depending on the nature of the program that the railroad chooses to adopt. For example, if the railroad's program states that the railroad will equip its fleet of locomotives with sets of EEBAs sufficient to accommodate the train crew and possible deadheading train employees, the railroad would have to provide the EEBA to the employee in that way, in the locomotive cab. On the other hand, if the railroad's program

states that the railroad will provide the EEBA to the employee as part of his or her personal equipment, the railroad would have to provide the EEBA in that manner. If the employee, for whatever reason, did not have the EEBA with him or her while in the locomotive cab, the railroad would be prohibited from using the locomotive by § 227.201(a)(2), which bars using a locomotive to transport a covered train if a covered employee occupying the cab of the locomotive does not have access to a working EEBA. One constant is that all railroads, subject to this part, are required to instruct employees placed in their general EEBA program in how to use EEBAs; the provision on instruction at § 227.209 requires that all employees, identified in § 227.211, be provided instruction on EEBAs.

Finally, § 227.211(c) requires railroads to maintain records concerning the persons and positions designated to be placed in its EEBA program and retain these records for the duration of the designation and for one year after the designation has ended.

Section 227.213 Employee's Responsibilities

Since employees who must be provided EEBAs are not always directly supervised by managers who can ensure the identified tasks are done at the appropriate time and frequency, this section establishes certain responsibilities on the part of employees. Some of these tasks may involve making records of such tasks as pre-trip inspections that must be done to ensure the EEBAs are ready for use. Additionally, FRA prohibits employees from willfully tampering with or vandalizing an EEBA in an attempt to disable or damage the device. *See* 49 CFR part 209, appendix A, for definition and discussion of ''willfully.''

Section 227.215 Recordkeeping in General

Section 227.215 sets out the general recordkeeping provisions for subpart C. Section 227.215(a) addresses the availability of required records. Section 227.215(a) provides that records required under this part, except for records of pre-trip inspections, be kept at system and division headquarters. It requires that a railroad make all records available for inspection and copying or photocopying by representatives of FRA upon request. The railroad must also make an employee's records available for inspection and copying or photocopying by that employee or such person's representative upon written authorization by such employee.

Section 227.215(b) permits required records to be kept in electronic form. These requirements are almost identical to the electronic recordkeeping requirements found in FRA's existing Track Safety Standards, 49 CFR 213.241(e). Section 227.215(b) allows each railroad to design its own electronic system as long as the system meets the specified criteria in § 227.215(b)(1) through (5), which are intended to safeguard the integrity and authenticity of each record.

Section 227.217 Compliance Dates

The specific dates by which certain groups of railroads are required to comply are set forth in this section. FRA recognizes that it will take time to procure EEBAs, instruct employees on their use, and outfit locomotives with the appropriate equipment to carry the devices. FRA staggers the compliance dates based on the size of the railroad, with larger railroads having to comply earlier. Under the final rule, FRA requires Class I railroads to be compliant within 12 months of the effective date of the final rule, with required compliance following for Class II railroads at 12 months and Class III and other railroads at 18 months.

Section 227.219 Incorporation by Reference

Because subpart C incorporates by reference ISO 23269–1:2008, BS EN 13794:2002, and BS EN 1146:2005, FRA is adding this section to comply with the requirements of 5 U.S.C. 552(a) and 1 CFR part 51. ISO 23269–1:2008 provides specifications for emergency escape breathing devices intended to supply air or oxygen needed to escape from accommodation and machinery spaces with a hazardous atmosphere. BS EN 13794:2002 provides specifications including requirements, testing, and marking for self-contained closed-circuit breathing apparatus intended for an escape from a hazardous atmosphere. BS EN 1146:2005 provides specifications including requirements, testing, and marking for self-contained open-circuit compressed air breathing apparatus incorporating a hood and intended for an escape from a hazardous atmosphere. They are reasonably available to all interested parties online at *https://webstore.ansi.org/* and *https://shop.bsigroup.com,* respectively. Further, FRA will maintain copies of the standards available for review at the Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

IX. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094

This final rule is not a significant regulatory action within the meaning of Executive Order 12866, as amended by Executive Order 14094, ''Modernizing Regulatory Review,'' [23] and DOT Order 2100.6A (''Rulemaking and Guidance Procedures''). Details on the estimated costs of this final rule can be found in the RIA, which FRA has prepared and placed in the docket (FRA–2009–0044).

FRA is issuing a final rule that enables covered employees to wear protective breathing apparatus in the event of a catastrophic release of PIH materials. This final rule requires that an EEBA be provided for each covered employee transporting PIH materials. These EEBAs will provide neck and face coverage with respiratory protection for these crewmembers. Railroads must also ensure that the equipment is maintained and in proper working condition. Finally, the final rule requires that railroads train crewmembers how to use the EEBAs.

The RIA presents estimates of the costs likely to occur over the first 10 years of the final rule. The analysis includes estimates of costs associated with the purchase of EEBAs and installation, employee training, and recordkeeping.

FRA has estimated costs for three options that are permissible under the rule. These include:

- *Option 1:* Employee Assignment—EEBAs are assigned to all relevant employees and considered part of their equipment.
- *Option 2:* Locomotive Assignment—EEBAs are assigned to and kept in locomotives.
- *Option 3*: Equipment Pooling—EEBAs are pooled at rail yards and kept in storage lockers where employees would check-in and check-out the EEBAs when PIH is being hauled.

For all three options, estimates were developed using a closed-circuit EEBA. For the ''Employee Assignment'' option, FRA estimates that the costs associated with issuing each T&E employee ($60,000) with an EEBA as their own personal equipment. The ''Locomotive Assignment'' option would require installing EEBAs in all locomotives in the covered railroad's fleet, regardless of whether a locomotive is part of a train that is transporting PIH material. There are approximately 24,000 locomotives owned by Class I railroads, and three apparatuses would have to be installed in each locomotive, one apparatus each

[23] 88 FR 21879 (April 6, 2023) located at *https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review.*

for the conductor, the engineer, and a supervisor. In the ''Equipment Pooling'' option, FRA considered only having EEBAs provided in trainsets that were transporting PIH. EEBAs would be brought on board after a determination is made on a case-by-case basis.

The analysis includes estimates of costs associated with the purchase of EEBAs and installation, employee training, and recordkeeping.

FRA estimates the 10-year costs of the final rule to be between $27.1 million and $91.9 million, discounted at 7 percent. The following table shows the total costs of this final rule, over the 10-year analysis period.

TOTAL 10-YEAR COSTS

[2021 Dollars] [24]

Category	10-year cost ($)	Present value 7% ($)	Present value 3% ($)	Annualized 7% ($)	Annualized 3% ($)
Option 1: Employee Assignment	92,327,892	79,247,309	86,066,845	11,283,034	10,089,660
Option 2: Locomotive Assignment	107,153,842	91,909,968	99,855,523	13,085,912	11,706,114
Option 3: Equipment Pooling	33,546,542	27,116,550	30,415,557	3,860,787	3,565,631

The benefits associated with this final rule are qualitative in nature and relate to the prevention of causalities and injuries. This rule is expected to improve railroad safety by ensuring that all covered employees can safely vacate the exposed area if a PIH material release were to occur. The primary benefits include heightened safety for crewmembers and, as a result, earlier awareness/notification to the public of PIH releases. Implementation of this rule should mitigate the injuries of covered employees from PIH material releasing after an accident/incident. Although the monetary costs associated with implementation of this rule would exceed the correspondingly measured benefits, under the RSIA, FRA must require railroads to: (1) ensure that EEBAs affording suitable ''head and neck coverage with respiratory protection'' are provided ''for all crewmembers'' in a locomotive cab on a freight train ''carrying hazardous materials that would pose an inhalation hazard in the event of release;'' (2) provide a place for convenient storage of EEBAs in the locomotive that will allow ''crewmembers to access such apparatus quickly;'' (3) maintain EEBAs ''in proper working condition;'' and (4) provide crewmembers with appropriate instruction in the use of EEBAs. Additionally, OMB Circular A–4 directs agencies to describe benefits qualitatively when it is not possible to quantify or monetize all of a rule's important benefits. Section 6 of the RIA discusses non-quantifiable benefits. FRA will not require a particular method of deployment of EEBAs, but rather leave that to the railroads' discretion. In addition, railroads will be allowed to select the type of apparatus to use in their program (closed-circuit or open-circuit). This allows railroads to deploy EEBAs in the manner best suited to their operations.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. FRA prepared this FRFA to evaluate the impact of the final rule on small entities and describe the effort to minimize the adverse impact. The estimated costs on small entities is not significant as it represents less than one percent of average annual revenue of affected entities. Even if FRA uses the estimated costs per small entity provided by ASLRRA, as discussed in section 5 below, the impact would still not be significant. Accordingly, the FRA Administrator hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

1. Statement of the Need for, and Objectives of, the Rule

This final rule requires railroads to provide an appropriate atmosphere-supplying EEBA, in proper working order, to train crewmembers, direct supervisors of train crewmembers, and certain other employees while these employees are occupying cabs of freight train locomotives transporting hazardous material that would pose an inhalation hazard in the event of release during an accident. This includes material poisonous by inhalation (poisonous-inhalation-hazard or PIH materials), gases poisonous by inhalation, and certain other materials classified as poisonous by inhalation. EEBAs are intended to protect covered employees from the risk of exposure to such hazardous materials while the employees escape from the locomotive cab during a catastrophic event.

The rule requires railroads that transport PIH materials on the general railroad system to establish and carry out a series of programs for: inspection and maintenance of the devices; instruction of employees in the use of the devices; and selection, procurement, and provision of the devices. Railroads are required to identify individual employees or positions to be placed in their EEBA programs so that enough EEBAs are available and that those employees know how to use the devices. Finally, the rule requires that convenient storage be provided for EEBAs in the locomotive to enable employees to access such apparatuses quickly in the event of a release of a hazardous material that poses an inhalation hazard.

2. Significant Issues Raised by Public Comments

FRA received several comments related to the anticipated costs of this rule. AAR and ASLRRA's comments address concerns about the financial impact of the RSIA mandate on small entities in the railroad industry, which they contend lack pricing power to pass on the costs of this rule to their customers and have small capital budgets necessitating that other work, such as track maintenance, will have to be deferred to pay for it. AAR and ASLRRA stated that while the initial costs for Class III railroads may indeed be modest the ongoing costs for inspection, maintenance, replacement, and enforcement penalties will result in permanent ongoing expenditures that will be particularly impactful on small railroads. The comment states that small railroads will likely focus on the purchase of EEBAs based on crew terminals and number of customers, face

[24] Numbers in this table and subsequent tables may not sum due to rounding.

higher costs than estimated, have limited options to benefit for bulk orders, and will face disproportionately high training costs. AAR and ASLRRA estimate that the total 10-year compliance costs to be borne by Class II and III railroads at over $6.6 million (PV, 7 percent), or over $945,000 on an annualized basis. For just Class III railroads, ASLRRA projects total costs to amount to almost $4.9 million (PV, 7 percent), with the individual annualized cost to each of the 110 impacted railroads estimated to be $6,333 per year, or more than four times the cost estimated in the SNPRM. As such, AAR and ASLRRA ask that FRA exercise its discretion, in this particular instance, to provide a ''de minimis'' exception for railroad operations, similar to what FRA provided for PTC requirements, to exempt Class II and III railroads from the requirement to provide EEBAs.

FRA understands ALSRRA's concerns, but the agency is constrained by section 413 of the RSIA. Unlike with PTC, Congress did not carve out an exemption for Class II and Class III railroads from the statutory requirement. See section 104 of the RSIA. Instead, Congress used broad language that covers any railroad carrier transporting hazardous materials that would pose an inhalation hazard in the event of release. In light of this language, FRA is constrained from instituting an exception for Class II and III railroads without congressional action. Notwithstanding these constraints, FRA has included measures to limit the costs for railroads. In particular, FRA will allow railroads to pursue the most cost-effective way to provide EEBAs in accordance with the statutory and regulatory requirements. Additionally, small railroads could consider pooling resources wherever possible for requirements such as periodic training. Indeed, many small railroads are jointly owned by the same holding companies making resource pooling even easier. In light of the concerns raised above, FRA has reexamined its estimated costs for small railroads based on comments received to the NPRM. In the regulatory impact analysis for the final rule, FRA has increased the cost estimate for Class III railroads to purchase EEBAs since each railroad may not purchase enough to secure a bulk discount on pricing. Therefore, FRA estimates that each EEBA for Class III railroads will be approximately $1,000, instead of $850 as was estimated in the RIA for the proposed rule.

3. Response to Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration

FRA did not receive a comment from the Small Business Administration.

4. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for-profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 1,500 employees, a ''commuter rail system'' with annual receipts of less than $47.0 million dollars, or a contractor that performs support activities for railroads with annual receipts of less than $34.0 million.[25]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR part 1201, General Instruction 1–1, which is $20 million or less in inflation-adjusted annual revenues,[26] and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.[27] FRA is using this definition for the final rule.

When shaping the final rule, FRA considered the impact that the final rule will have on small entities. The final rule will be applicable to all railroads with locomotives that transport PIH materials. FRA estimates there are 733 Class III railroads that operate on the general system. These railroads are of varying size, with some belonging to larger holding companies. FRA is aware of 110 Class III railroads that transport PIH materials. The remaining Class III railroads do not transport PIH, and thus will not be impacted by this final rule.

5. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

Class III Railroads will have all the same requirements as larger railroads, reduced for the estimated number of locomotives and employees on Class III railroads. Small railroads may not be able to benefit from bulk discount rates on EEBAs, so FRA has adjusted that cost to not include the 15% discount for Class III railroads. All other cost components will be the same as larger railroads.

The following table shows the annualized cost for Class III railroads over the 10-year analysis period. The total estimated 10-year costs for Class III railroads will be $1.1 million (PV, 7 percent) and the annualized cost for all Class III railroads will be $151,467 (PV, 7 percent).

TOTAL 10-YEAR AND ANNUALIZED COSTS, CLASS III RAILROADS

Category	Present value (7%)	Annualized (7%)
EEBA and Installation	731,620	104,166
Training	232,950	33,167
Records	99,272	14,134
Total	1,063,841	151,467

[25] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes, March 27, 2023. *https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.*

[26] The Class III railroad revenue threshold is $46.3 million or less, for 2022. *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-C/part-1201.*

[27] *See* 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

The industry trade organization representing small railroads, ASLRRA, reports the average freight revenue per Class III railroad is $4.75 million. The following table summarizes the average annual costs and revenue for Class III railroads.

AVERAGE CLASS III RAILROADS' COSTS AND REVENUE

Total cost for class III railroads, annualized 7%	Number of class III railroads with PIH	Average annual cost per class III railroad ($)	Average class III annual revenue ($)	Average annual cost as a percent of revenue
a	b	c = a ÷ b	d	e = c ÷ d
151,467	110	1,377	4,750,000	0.03%

The average annual cost for a Class III railroad impacted by this rule will be $1,377. This represents a small percentage (0.03%) of the average annual revenue for a Class III railroad. The estimates above show that the burden on Class III railroads will not be a significant economic burden.

6. A Description of the Steps the Agency Has Taken To Minimize the Economic Impact on Small Entities

When developing the final rule, FRA considered the impact that the final rule will have on small entities. FRA has included measures to limit the costs for railroads. In particular, FRA will allow railroads to pursue the most cost-effective way to provide EEBAs in accordance with the statutory and regulatory requirements. Small railroads could consider pooling resources wherever possible for requirements such as periodic training. Additionally, under the final rule, FRA allows additional time for Class III and other railroads to implement the rule. Class III railroads are allotted 18 months for implementation rather than 12 months.

C. Federalism

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA 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'' are 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that the final rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this final rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. However, this final rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically a provision of the former FRSA, repealed and recodified at 49 U.S.C 20106, and the former LBIA, repealed and recodified at 49 U.S.C. 20701–20703. *See* Public Law 103–272 (July 5, 1994). A provision of the former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to section 20106. Moreover, the former LBIA has been interpreted by the Supreme Court as preempting the entire field of locomotive safety. *See Napier* v. *Atlantic Coast R.R.,* 272 U.S. 605, 611; 47 S.Ct. 207, 209 (1926).

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under a provision of the former FRSA and under the former LBIA. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to OMB [28] under the Paperwork Reduction Act of 1995.[29] The information collection requirements and the estimated time to fulfill each requirement are as follows:

[28] FRA will be using the OMB control number (OMB No. 2130–0620) that was issued when the previous NPRM was published in 2010 for this information collection request.

[29] 44 U.S.C. 3501 *et seq.*

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden (hours) (C) = A * B	Total cost equivalent (hours) (D) = C * wage [30]
227.201(a)—Criteria for requiring availability of EEBAs in the locomotive cab—Employees designated by the railroad in writing.	128 railroads	600 designations	3 minutes	30.00	$2,337.30
227.203(c)—Criteria for selecting EEBAs—Railroads to document the adequacy of the EEBA and provide such documentation for inspection to FRA upon request.	128 railroads	43 written justifications	2 hours	86.00	6,700.26
227.205(c)—Storage facilities for EEBAs—Railroads to keep a copy of the instructions at their system headquarters for FRA inspection.	128 railroads	43 instruction copies	1 minute	.72	56.10
227.207(a)—Railroad's program for inspection, maintenance, and replacement of EEBAs; requirements for procedures—Written program for inspection, maintenance, and replacement of EEBAs.	The paperwork burden for this requirement is covered under § 227.211.				
—(b) Inspection procedures and records—Tag or label that is attached to the storage facility for the EEBA or kept with the EEBA or in inspection reports stored as paper or electronic files.	128 railroads	10,000 inspection records	30 seconds	83.33	6,492.24
—(d) Records of returns, maintenance, repair, and replacement—Recordkeeping and retention.	128 railroads	180 records	30 seconds	1.50	116.87
227.209(a)—Railroad's program of instruction on EEBAs—Written program of instruction on EEBAs.	The paperwork burden for this requirement is covered under § 227.211.				
—(d) Records of instruction—Railroad to maintain a record of employees provided instruction in compliance with this section and retain these records for three years [31].	128 railroads	20,000 initial training records	3 minutes	1,000.00	62,670.00
—(d) Records of intervals for periodic instruction	128 railroads	2,000 refresher or new hire training records.	3 minutes	100.00	6,267.00
227.211(a), (b) and (d)—Requirement to implement a general EEBA program; criteria for placing employees in the general EEBA program—Comprehensive written program.	128 railroads	45.67 written programs (2.33 Class I railroads' programs + 42.33 Class II and III railroads' programs + 1 generic program developed by ASLRRA).	80 hours + 2 hours + 80 hours.	351.33	30,167.83
—(c) Records of positions or individuals or both in the railroad's general EEBA—Designated employees by the railroad to be placed in its general EEBA program pursuant to § 227.211(b)(4).	The paperwork burden for this requirement is covered under §§ 227.201 and 227.209.				
227.213(a)(3)—Employee's responsibilities—Notification to railroad of EEBA failures and of use incidents in a timely manner.	128 railroads	1 notification	1 minute	.02	1.25
227.215(b)—Recordkeeping in general—Electronic records to meet FRA requirements.	18 railroads	6 modified systems	1 hour	6.00	467.46
—(b)(5) Paper copies of electronic records and amendments to those records are made available for inspection and copying or photocopying by representatives of FRA.	128 railroads	43 copies	15 minutes	10.75	837.53
Total [32]	128 railroads	32,962 responses	N/A	1,670	116,114

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

[30] The dollar equivalent cost is derived from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

[31] The associated burden related to employees' training are calculated under the economic cost of the regulation.

[32] Totals may not add up due to rounding.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in such an expenditure, and thus preparation of such a statement is not required.

G. Environmental Assessment

FRA has evaluated this final rule in accordance with the National Environmental Policy Act (NEPA), the Council of Environmental Quality's NEPA implementing regulations, and FRA's NEPA implementing regulations. FRA has determined that this proposed rule is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS. Specifically, FRA has determined that this final rule is categorically excluded from detailed environmental review.

This rulemaking would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. FRA has concluded that no such unusual circumstances exist with respect to this final rule and it meets the requirements for categorical exclusion.

Pursuant to section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by section 4(f). Further, FRA reviewed this final rulemaking and found it consistent with Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad.''

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action'' (66 FR 28355, May 22, 2001). FRA evaluated this final rule in accordance with Executive Order 13211 and determined that this final rule is not a ''significant energy action'' within the meaning of Executive Order 13211.

I. Analysis Under 1 CFR Part 51

As required by 1 CFR 51.5, FRA has summarized the standards it is incorporating by reference in the section-by-section analysis in this preamble. These standards summarized herein, are reasonably available to all interested parties for inspection. Copies can be obtained from the International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland, telephone +41–22–749–08–88 or *https://www.iso.org/standard/50245.html* and from the British Standards Institution, 12110 Sunset Hills Road, Suite 200, Reston, VA 20190–5902, telephone: 800–862–4977 or *https://shop.bsigroup.com.* They are also available for inspection at the Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; phone: (202) 493–6052; email: *FRALegal@dot.gov.*

J. Environmental Justice

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. DOT Order 5610.2C (''U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations.[33] FRA has evaluated this final rule under Executive Orders 12898 and 14096 and DOT Order 5610.2C and has determined it will not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

K. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this final rule in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' dated November 6, 2000. The final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

[33] Executive Order 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice,'' issued on April 26, 2023, supplements Executive Order 12898, but is not currently referenced in DOT Order 5610.2C.

List of Subjects in 49 CFR Part 227

Hazardous materials transportation, Incorporation by reference, Locomotive noise control, Occupational safety and health, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

For the reasons discussed in the preamble, FRA amends part 227 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 227—OCCUPATIONAL SAFETY AND HEALTH IN THE LOCOMOTIVE CAB

■ 1. The authority citation for part 227 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20103 note, 20166, 20701–20703, 21301, 21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 2. Revise the heading for part 227 to read as set forth above.

■ 3. Revise § 227.1 to read as follows:

§ 227.1 Purpose and scope.

(a) *General.* The purpose of this part is to protect the occupational safety and health of certain employees who are exposed to occupational dangers while in the cab of the locomotive. This part prescribes minimum Federal safety and health standards for certain locomotive cab occupants. This part does not restrict a railroad or railroad contractor from adopting and enforcing additional or more stringent requirements.

(b) *Subpart B of this part.* The purpose of subpart B is to protect the occupational safety and health of employees whose predominant noise exposure occurs in the locomotive cab. Subpart B prescribes minimum Federal safety and health noise standards for locomotive cab occupants.

(c) *Subpart C of this part.* The purpose of subpart C is to protect the occupational safety and health of train employees and certain other employees in the cab of the locomotive of a freight train that is transporting a poison inhalation hazard (PIH) material that, if released due to a railroad accident/incident, would pose an inhalation hazard to the occupants. In particular,

subpart C is intended to protect these employees from the risk of exposure to the material while they are located in, or during escape from, the locomotive cab.

■ 4. Amend § 227.3 by revising paragraphs (a), (b) introductory text, and (b)(5) and adding paragraphs (c) and (d) to read as follows:

§ 227.3 Application.

(a) Except as provided in paragraph (b) of this section, subpart B of this part applies to all railroads and contractors to railroads.

(b) Subpart B of this part does not apply to—

* * * * *

(5) Foreign railroad operations that meet the following conditions: Employees of the foreign railroad have a primary reporting point outside of the U.S. but are operating trains or conducting switching operations in the U.S.; and the government of that foreign railroad has implemented requirements for hearing conservation for railroad employees; the foreign railroad undertakes to comply with those requirements while operating within the U.S.; and FRA's Associate Administrator for Railroad Safety/Chief Safety Officer determines that the foreign requirements are consistent with the purpose and scope of subpart B of this part. A ''foreign railroad'' refers to a railroad that is incorporated in a place outside the U.S. and is operated out of a foreign country but operates for some distance in the U.S.

(c) Except as provided in paragraph (d) of this section, subpart C of this part applies to any railroad that operates a freight train that transports a PIH material, including a residue of such a PIH material, on standard gage track that is part of the general railroad system of transportation.

(d) Subpart C of this part does not apply to a railroad that operates only on track inside an installation that is not part of the general railroad system of transportation.

■ 5. Amend § 227.5 by adding, in alphabetical order, definitions for ''Accident/incident'', ''Associate Administrator for Railroad Safety/Chief Safety Officer'', ''Atmosphere immediately dangerous to life or health (IDLH)'', ''Atmosphere-supplying device'', ''Deadheading'', ''Division headquarters'', ''Emergency escape breathing apparatus or EEBA'', ''Freight car'', ''Freight train'', ''Hazardous material'', ''Hazmat employee'', ''In service or in-service'', ''Intermodal container'', ''ISO'', ''NIOSH'', ''PIH material'', ''Residue'', ''State'', ''Switching service'', ''System headquarters'', ''Train employee'', and ''United States'' to read as follows:

§ 227.5 Definitions.

* * * * *

Accident/incident has the meaning that is assigned to that term by § 225.5 of this chapter.

* * * * *

Associate Administrator for Railroad Safety/Chief Safety Officer means the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

Atmosphere immediately dangerous to life or health (IDLH) means an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

Atmosphere-supplying device means a respirator that supplies the respirator user with breathing air from a source that is independent of the ambient atmosphere. Such devices include supplied-air respirators and self-contained breathing apparatus units.

* * * * *

Deadheading means the physical relocation of a train employee from one point to another as a result of a railroad-issued oral or written directive.

* * * * *

Division headquarters means the location designated by the railroad where a high-level operating manager (*e.g.,* a superintendent, division manager, or equivalent), who has jurisdiction over a portion of the railroad, has an office.

Emergency escape breathing apparatus or *EEBA* means an atmosphere-supplying respirator device that is designed for use only during escape from a hazardous atmosphere.

* * * * *

Freight car means a vehicle designed to transport freight, or railroad personnel, by rail and includes, but is not limited to, a—

(1) Box car;
(2) Refrigerator car;
(3) Ventilator car;
(4) Stock car;
(5) Gondola car;
(6) Hopper car;
(7) Flat car;
(8) Special car;
(9) Caboose;
(10) Tank car; and
(11) Yard car.

Freight train means one or more locomotives coupled with one or more freight cars, except during switching service.

Hazardous material has the meaning assigned to that term by § 171.8 of this title.

Hazmat employee has the meaning assigned to that term by § 171.8 of this title.

* * * * *

In service or *in-service* when used in connection with a freight train, means each freight train subject to this part unless the train—

(1) Is in a repair shop or on a repair track;

(2) Is on a storage track and its cars are empty; or

(3) Has been delivered in interchange but has not been accepted by the receiving carrier.

Intermodal container means a freight container designed and constructed to permit it to be used interchangeably in two or more modes of transportation.

ISO means the International Organization for Standardization, a network of national standards institutes in 162 countries, including the United States through the American National Standards Institute, that develops international standards to assist in ensuring the safe performance of a wide range of devices, including EEBAs.

* * * * *

NIOSH means the National Institute for Occupational Safety and Health, a Federal agency responsible for conducting research and making recommendations for the prevention of work-related injury and illness, which is part of the Centers for Disease Control and Prevention in the U.S. Department of Health and Human Services and which certifies industrial-type respirators in accordance with the NIOSH respiratory regulations (42 CFR part 84).

* * * * *

PIH material means any of the hazardous materials that are a gas, liquid, or other material defined as a ''material poisonous by inhalation'' by § 171.8 of this title.

* * * * *

Residue has the meaning assigned to the term by § 171.8 of this title.

* * * * *

State means a State of the United States of America or the District of Columbia.

Switching service means the classification of freight cars according to commodity or destination; assembling of cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a freight train movement.

System headquarters means the location designated by the railroad as the general office for the railroad system.

* * * * *

Train employee means an individual who is engaged in or connected with the movement of a train, including a hostler, as defined in 49 U.S.C. 21101.

United States means all of the States and the District of Columbia.

§ 227.7 [Removed and Reserved]

■ 6. Remove and reserve § 227.7.

■ 7. Amend § 227.15 by revising paragraph (b) to read as follows:

§ 227.15 Information collection.

* * * * *

(b) The information collection requirements are found in the following sections: §§ 227.13, 227.103, 227.107, 227.109, 227.111, 227.117, 227.119, 227.121, 227.201, 227.203, 227.205, 227.207, 227.209, 227.211, 227.213, and 227.215.

■ 8. Amend § 227.103 by revising paragraphs (a)(1) and (2) to read as follows:

§ 227.103 Noise monitoring program.

(a) * * *

(1) Class I, passenger, and commuter railroads no later than February 26, 2008.

(2) Railroads with 400,000 or more annual employee hours that are not Class I, passenger, or commuter railroads no later than August 26, 2008.

* * * * *

■ 9. Amend § 227.109 by revising paragraph (e)(2)(i) to read as follows:

§ 227.109 Audiometric testing program.

* * * * *

(e) * * *

(2) * * *

(i) For all employees without a baseline audiogram as of February 26, 2007, Class I, passenger, and commuter railroads, and railroads with 400,000 or more annual employee hours shall establish a valid baseline audiogram by February 26, 2009; and railroads with less than 400,000 annual employee hours shall establish a valid baseline audiogram by February 26, 2010.

* * * * *

■ 10. Amend § 227.119 by revising paragraph (b)(2) to read as follows:

§ 227.119 Training program.

* * * * *

(b) * * *

(2) For employees hired on or before February 26, 2007, by Class I, passenger, and commuter railroads, and railroads with 400,000 or more annual employee hours, by no later than February 26, 2009;

* * * * *

■ 11. Add subpart C, consisting of §§ 227.201 through 227.219, to read as follows:

Subpart C—Emergency Escape Breathing Apparatus Standards

Sec.

Subpart C—Emergency Escape Breathing Apparatus Standards

§ 227.201 Criteria for requiring availability of EEBAs in the locomotive cab.

(a) *In general.* (1)(i) Except as specified in paragraph (b) of this section, a railroad is required to provide an EEBA to each of the following of its employees while the employee is located in the cab of a locomotive of an in-service freight train transporting a PIH material, including a residue of a PIH material:

(A) Any train employee;

(B) Any direct supervisor of the train employee;

(C) Any employee who is deadheading; and

(D) Any other employee designated by the railroad in writing and at the discretion of the railroad.

(ii) Each EEBA provided to an employee identified in paragraph (a)(1)(i) of this section must meet the EEBA-selection criteria of § 227.203 and must have been inspected and be in working order pursuant to the requirements of § 227.207 at the time that the EEBA is provided to the employee.

(2) Except as specified in paragraph (b) of this section, a railroad shall not use a locomotive to transport a PIH material, including a residue of a PIH material, in an in-service freight train unless each of the employees identified in paragraph (a)(1)(i) of this section while occupying a locomotive cab of the train has access to an EEBA that satisfies the EEBA selection criteria in § 227.203 and that has been inspected and is in working order pursuant to the requirements in § 227.207.

(b) *Exceptions.* (1) A railroad is not required to provide an EEBA, or make accessible an EEBA, to an employee while in the locomotive cab of an in-service freight train transporting a PIH material if all of the PIH materials in the train, including a residue of a PIH material, are being transported in one or more intermodal containers.

(2) This subpart does not apply to any of the following:

(i) Employees who are moving a locomotive or group of locomotives coupled to a car or group of cars transporting a PIH material, including a residue of a PIH material, only within the confines of a locomotive repair or servicing area.

(ii) Employees who are moving a locomotive or group of locomotives coupled to a car or group of cars transporting a PIH material, including a residue of a PIH material for distances of less than 100 feet for inspection or maintenance purposes.

(c) *Employee misconduct.* Notwithstanding any exceptions identified in this subpart, any employee who willfully tampers with or vandalizes an EEBA shall be subject to this subpart for purposes of enforcement relating to § 227.213.

§ 227.203 Criteria for selecting EEBAs.

In selecting the appropriate EEBA to provide to an employee, the railroad shall do the following:

(a) Select an atmosphere-supplying EEBA that protects against all PIH materials (including their residue) that are being transported by the freight train while in service.

(b) Ensure that the type of respirator selected meets the requirements of paragraph (c)(1) of this section regarding minimum breathing capacity and is—

(1) Certified for an escape only purpose by NIOSH pursuant to 42 CFR part 84; or

(2) Declared by the manufacturer, based on verifiable testing by the manufacturer or an independent third party, to meet the criteria established by one of the following:

(i) ISO 23269–1:2008 (incorporated by reference, see § 227.219);

(ii) BS EN 13794:2002 (incorporated by reference, see § 227.219); or

(iii) BS EN 1146:2005 (incorporated by reference, see § 227.219).

(c) Document, and provide such documentation for inspection by FRA upon request, the rationale for the final selection of an EEBA by addressing each of the following concerns:

(1) *Breathing time.* Each EEBA must be fully charged and contain a

minimum breathing capacity of 15 minutes at the time of the pre-trip inspection required under § 227.207(a)(1).

(2) *Head and neck protection.* The EEBA selected must provide a means of protecting the individual's head and neck from the irritating effects of PIH materials to facilitate escape.

(3) *Accommodation for eyeglasses and a range of facial features.* The EEBA selected must provide a means of protecting each employee who is required to be provided with the EEBA, including those who wear glasses, and allow for the reasonable accommodation of each such employee's facial features, including facial hair.

§ 227.205 Storage facilities for EEBAs.

(a) A railroad may not use a locomotive if it is part of an in-service freight train transporting a PIH material, including a residue of a PIH material, and the locomotive cab is occupied by an employee identified in § 227.201(a)(1)(i)(A) through (D) (subject employee), unless the locomotive cab has appropriate storage facilities to hold the number of EEBAs required to be provided.

(b) The storage facility for each required EEBA must—

(1) Prevent deformation of the face piece and exhalation valve, where applicable;

(2) Protect the EEBA from incidental damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, and damaging chemicals;

(3) Provide each subject employee located in the locomotive cab with ready access to the EEBA during an emergency; and

(4) Provide a means for each subject employee to locate the EEBA under adverse conditions such as darkness or disorientation.

(c) A railroad must comply with the applicable manufacturer's instructions for storage of each required EEBA and must keep a copy of the instructions at its system headquarters for FRA inspection.

§ 227.207 Railroad's program for inspection, maintenance, and replacement of EEBAs; requirements for procedures.

(a) *General.* Each railroad shall establish and comply with a written program for inspection, maintenance, and replacement of EEBAs that are required under this subpart. The program for inspection, maintenance, and replacement of EEBAs shall be maintained at the railroad's system headquarters and shall be amended, as necessary, to reflect any significant changes. This program shall include the following procedures:

(1) Procedures for performing and recording a pre-trip inspection of each EEBA that is required to be provided on a locomotive being used to transport a PIH material and procedures for cleaning, replacing, or repairing each required EEBA, if necessary, prior to its being provided under § 227.201(a);

(2) Procedures for performing and recording periodic inspections and maintenance of each required EEBA in a manner and on a schedule in accordance with the manufacturer's recommendations; and

(3) Procedures for turning in and obtaining a replacement for a defective, failed, or used EEBA and for recording those transactions.

(b) *Inspection procedures and records.* (1) A railroad's procedures for pre-trip and periodic inspections of EEBAs shall require that the following information about each pre-trip and periodic inspection be accurately recorded on a tag or label that is attached to the storage facility for the EEBA or kept with the EEBA or in inspection reports stored as paper or electronic files:

(i) The name of the railroad performing the inspection;

(ii) The date that the inspection was performed;

(iii) The name and signature of the individual who made the inspection;

(iv) The findings of the inspection;

(v) The required remedial action; and

(vi) A serial number or other means of identifying the inspected EEBA.

(2) A railroad shall maintain an accurate record of each pre-trip and periodic inspection required by this section. Pre-trip inspection records shall be retained for a period of 92 days. Periodic inspection records shall be retained for a period of one year.

(c) *Procedures applicable if EEBA fails an inspection or is used.* An EEBA that fails an inspection required by this section, is otherwise found to be defective, or is used, shall be removed from service and be discarded or repaired, adjusted, or cleaned in accordance with the following procedures:

(1) Repair, adjustment, and cleaning of EEBAs shall be done only by persons who are appropriately trained to perform such work and who shall use only the EEBA manufacturer's approved parts designed to maintain the EEBA in compliance with one of the following standards:

(i) NIOSH at 42 CFR part 84;

(ii) ISO 23269–1:2008 (incorporated by reference, see § 227.219);

(iii) BS EN 1146:2005 (incorporated by reference, see § 227.219); or

(iv) BS EN 13794:2002 (incorporated by reference, see § 227.219).

(2) Repairs shall be made according to the manufacturer's recommendations and specifications for the type and extent of repairs to be performed.

(3) Where applicable, reducing and admission valves, regulators, and alarms shall be adjusted or repaired only by the manufacturer or a technician trained by the manufacturer.

(4) An EEBA may not be returned to service unless it meets the requirements in § 227.203.

(d) *Records of returns, maintenance, repair, and replacement.* A railroad shall—

(1) Maintain an accurate record of return, maintenance, repair, or replacement for each EEBA required by this subpart; and

(2) Retain each of these records for three years.

§ 227.209 Railroad's program of instruction on EEBAs.

(a) *General.* (1) A railroad shall adopt and comply with its written program of instruction on EEBAs for all of its employees in its general EEBA program under § 227.211 (subject employees). The program of instruction shall be maintained at the railroad's system headquarters and shall be amended, as necessary, to reflect any significant changes.

(2) This program may be integrated with the railroad's program of instruction on operating rules under § 217.11 of this chapter or its program of instruction for hazmat employees under § 172.704 of this title. If the program is not integrated with either of these programs, it must be written in a separate document that is available for inspection by FRA.

(b) *Subject matter.* The railroad's program of instruction shall require that the subject employees demonstrate knowledge of at least the following:

(1) Why the EEBA is necessary and how improper fit, usage, or maintenance can compromise the protective effect of the EEBA.

(2) The capabilities and limitations of the EEBA, particularly the limited time for use.

(3) How to use the EEBA effectively in emergency situations, including situations in which the EEBA malfunctions.

(4) How to inspect, put on, remove, and use the EEBA, and how to check the seals of the EEBA.

(5) Procedures for maintenance and storage of the EEBA that must be followed.

(6) The requirements of this subpart related to the responsibilities of employees and the rights of employees to have access to records.

(7) The hazardous materials classified as PIH materials.

(c) *Dates of initial instruction and intervals for periodic instruction.* (1) The instruction for current subject employees shall be provided on an initial basis no later than 30 days prior to the date of compliance identified in § 227.217. Initial instruction of new subject employees shall occur either 30 days prior to the date of compliance identified in § 227.217 or before assignment to jobs where the deployment of EEBAs on a locomotive is required, whichever is later.

(2) Initial instruction shall be supplemented with periodic instruction at least once every three years.

(d) *Records of instruction.* A railroad shall maintain a record of employees provided instruction in compliance with this section and retain these records for three years.

§ 227.211 Requirement to implement a general EEBA program; criteria for placing employees in the general EEBA program.

(a) *In general.* A railroad shall adopt and comply with a comprehensive, written, general program to implement this subpart that shall be maintained at the railroad's system headquarters. Each railroad shall amend its general EEBA program, as necessary, to reflect any significant changes.

(b) *Elements of the general EEBA program and criteria for placing employees in program.* A railroad's general EEBA program shall—

(1) Identify the individual who implements and manages the railroad's general EEBA program by title. The individual must have suitable training and sufficient knowledge, experience, skill, and authority to enable him or her to manage properly a program for provision of EEBAs. If the individual is not directly employed by the railroad, the written program must identify the business relationship of the railroad to the individual fulfilling this role.

(2) Describe the administrative and technical process for selection of EEBAs appropriate to the hazards that may be reasonably expected.

(3) Describe the process used to procure and provide EEBAs in a manner to ensure the continuous and ready availability of an EEBA to each of the railroad's employees identified in § 227.201(a)(1)(i)(A) through (D) (while actually occupying the locomotive cab of a freight train in service transporting a PIH material). This description shall include—

(i) A description of the method used for provision of EEBAs, including whether the EEBAs are individually assigned to employees, installed on locomotives as required equipment, or provided by other means. If EEBAs are installed on locomotives as required equipment, the means of securement shall be designated.

(ii) The decision criteria used by the railroad to identify trains in which provision of EEBAs is not required.

(iii) A description of what procedures will govern the railroad at interchange to ensure that the locomotive cab in each in-service freight train transporting a PIH material has an EEBA accessible to each of the employees identified in § 227.201(a)(1)(i)(A) through (D) while in the cab of the locomotive, including what procedures are in place to ensure that the EEBAs provided satisfy the EEBA-selection criteria in § 227.203, satisfy the EEBA-storage criteria in § 227.205, and have been inspected and are in working order pursuant to the requirements in § 227.207.

(4) Ensure that each of the following employees, except those excluded by § 227.201(b), whose duties require regular work in the locomotive cabs of in-service freight trains transporting a PIH material, including a residue of a PIH material, has the required EEBA available when they occupy the cab of such a train and know how to use the EEBA:

(i) Employees who perform service subject to 49 U.S.C. 21103 (train employees) on such trains;

(ii) Direct supervisors of train employees on such trains;

(iii) Deadheading employees on such trains; and

(iv) Any other employees designated by the railroad in writing and at the discretion of the railroad.

(c) *Records of positions or individuals or both in the railroad's general EEBA program.* A railroad shall maintain a record of all positions or individuals, or both, who are designated by the railroad to be placed in its general EEBA program pursuant to paragraph (b)(4) of this section. The railroad shall retain these records for the duration of the designation and for one year thereafter.

(d) *Consolidated programs.* A group of two or more commonly controlled railroads subject to this subpart may request in writing that the Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator) treat them as a single railroad for purposes of adopting and complying with the general EEBA program required by this section. The request must list the parent corporation that controls the group of railroads and demonstrate that the railroads operate in the United States as a single, integrated rail system. The Associate Administrator will notify the railroads of his or her decision in writing.

§ 227.213 Employee's responsibilities.

(a) An employee to whom the railroad provides an EEBA shall—

(1) Participate in training under § 227.209;

(2) Follow railroad procedures to ensure that the railroad's EEBAs—

(i) Are maintained in a secure and accessible manner;

(ii) Are inspected as required by this subpart and the railroad's program of inspection; and

(iii) If found to be unserviceable upon inspection, are turned in to the appropriate railroad facility for repair, periodic maintenance, or replacement; and

(3) Notify the railroad of EEBA failures and of use incidents in a timely manner.

(b) No employee shall willfully tamper with or vandalize an EEBA that is provided pursuant to § 227.201(a) in an attempt to disable or damage the EEBA.

§ 227.215 Recordkeeping in general.

(a) *Availability of records.* (1) A railroad shall make all records required by this subpart available for inspection and copying or photocopying to representatives of FRA, upon request.

(2) Except for records of pre-trip inspections of EEBAs under § 227.207, records required to be retained under this subpart must be kept at the system headquarters and at each division headquarters where the tests and inspections are conducted.

(b) *Electronic records.* All records required by this subpart may be kept in electronic form by the railroad. A railroad may maintain and transfer records through electronic transmission, storage, and retrieval provided that all of the following conditions are met:

(1) The electronic system is designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons have the same electronic identity.

(2) The electronic system ensures that each record cannot be modified in any way, or replaced, once the record is transmitted and stored.

(3) Any amendment to a record is electronically stored apart from the record that it amends. Each amendment to a record is uniquely identified as to the individual making the amendment.

(4) The electronic system provides for the maintenance of records as originally

submitted without corruption or loss of data.

(5) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this subpart are made available for inspection and copying or photocopying by representatives of FRA.

§ 227.217 Compliance dates.

(a) Class I railroads subject to this subpart are required to comply with this subpart beginning no later than 12 months from March 26, 2024.

(b) Class II railroads subject to this subpart are required to comply with this subpart beginning no later than 12 months from March 26, 2024.

(c) Class III railroads subject to this subpart and any other railroads subject to this subpart are required to comply with this subpart beginning no later than 18 months from March 26, 2024.

§ 227.219 Incorporation by reference.

Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the FRA and the National Archives and Records Administration (NARA). Contact FRA at: Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; phone: (202) 493–6052; email: *FRALegal@dot.gov*. 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*. The material may be obtained from the following sources:

(a) The British Standards Institution, 12110 Sunset Hills Road, Suite 200, Reston, VA 20190–5902, phone: 800–862–4977; website: *shop.bsigroup.com*.

(1) BS EN 1146:2005, Respiratory protective devices—Self-contained, open-circuit compressed air breathing apparatus incorporating a hood for escape—requirements, testing, marking; February 2, 2006; into §§ 227.203(b) and 227.207(c).

(2) BS EN 13794:2002, Respiratory protective devices—Self-contained, closed-circuit breathing apparatus for escape—requirements, testing, marking, November 26, 2002; into §§ 227.203(b) and 227.207(c).

(b) International Organization for Standardization, Chemin de Blandonnet 8, CP 401, 1214 Vernier, Geneva, Switzerland; phone +41–22–749–08–88; website: *www.iso.org*.

(1) ISO 23269–1:2008(E), Ships and marine technology—Breathing apparatus for ships—Part 1: Emergency escape breathing devices (EEBD) for shipboard use, First Edition, February 1, 2008; into §§ 227.203(b) and 227.207(c).

(2) [Reserved]

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2024–01074 Filed 1–25–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230306–0065; RTID 0648–XD669]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2024 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), January 25, 2024, through 2400 hours, A.l.t., December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Adam Zaleski, 907–586–7228.

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

The 2024 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI is 3,867 metric tons as established by the final 2023 and 2024 harvest specifications for groundfish in the BSAI (88 FR 14926, March 10, 2023), inseason adjustment (88 FR 88836, December 26, 2023) and reallocation (89 FR 2176, January 12, 2024).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2024 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI.

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 vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 23, 2024.

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: January 23, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–01692 Filed 1–25–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 18
Friday, January 26, 2024

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 147

[Docket Number USCG–2023–0985]

RIN 1625–AA00

Safety Zone; Coastal Virginia Offshore Wind—Commercial Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0483, Offshore Virginia, Atlantic Ocean

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish 179 temporary 500-meter safety zones around the construction of 176 wind turbine generators and three offshore substations in Federal waters on the Outer Continental Shelf, east-northeast of Virginia Beach, Virginia. This action would protect life, property, and the environment during construction of their foundations and their subsequent installation, from May 1, 2024, to May 1, 2027. When subject to enforcement, only attending vessels and those vessels specifically authorized by the Fifth Coast Guard District Commander, or a designated representative, are permitted to enter or remain in the temporary safety zones.

DATES: Comments and related material must be received by the Coast Guard on or before February 26, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0985 using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of **SUPPLEMENTARY INFORMATION**. 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 Mr. Matthew Creelman, Waterways Management, at Coast Guard Fifth District, telephone 757–398–6230, email *Matthew.K.Creelman2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BOEM Bureau of Ocean Energy Management
CFR Code of Federal Regulations
CVOWCWF Coastal Virginia Offshore Wind—Commercial Wind Farm
DMS Degrees Minutes Seconds
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
OCS Outer Continental Shelf
OSS Offshore Substation
WGS 84 World Geodetic System 84
NM Nautical Mile
§ Section
U.S.C. United States Code
WTG Wind Turbine Generator

II. Background, Purpose, and Legal Basis

On December 13, 2023, the Virginia Electric and Power Company, doing business as Dominion Energy, notified the Coast Guard that they plan to begin construction of facilities in the Coastal Virginia Offshore Wind-Commercial Wind Farm (CVOWCWF) project area within Federal waters on the Outer Continental Shelf (OCS), specifically in the Bureau of Ocean Energy Management (BOEM) Renewable Energy Lease Area OCS–A 0483, approximately 23 nautical miles (NM) east-northeast of Virginia Beach, Virginia.

The construction of these OCS facilities, which is inherently complex because of their location offshore, presents many unusually hazardous conditions, including those presented by hydraulic pile driving hammer operations, heavy lift operations, overhead cutting operations, the risk that debris will fall, increased vessel traffic in support of construction, and the presence of stationary barges in close proximity to the facilities and each other.

The Fifth Coast Guard District Commander has determined that the establishment of temporary safety zones during construction of WTGs and substation, is warranted to ensure the safety of life, property, and the environment. Each temporary safety zone will have a 500-meter radius around an individual construction site and be enforced only during construction.

The Coast Guard is proposing this rule under the authorities provided in 14 U.S.C. 544, 43 U.S.C. 1333, and Department of Homeland Security (DHS) Delegation No. 00170.1, Revision No. 01.3. Pursuant to those authorities, 33 CFR 147.10 provides for the establishment of safety zones for non-mineral energy resource, permanent or temporary structures located on the OCS for the purpose of protecting life and property on the facilities, its appurtenances and attending vessels, or on the adjacent waters within the safety zone. A safety zone established under 33 CFR part 147 may include provisions to restrict, prevent, or control certain activities (including access by vessels or persons) to maintain safety of life, and to protect property and the environment.

III. Discussion of Proposed Rule

The District Commander is proposing to establish 179 temporary 500-meter safety zones around the construction sites of 176 WTGs and three OSSs on the OCS from May 1, 2024, through 11:59 p.m. on May 1, 2027. Construction will take place in the CVOWCWF project area, more specifically, in the BOEM Renewable Energy Lease Area OCS–A–0483 approximately 23 NM east-northeast of Virginia Beach, Virginia, within Federal waters on the OCS.

The construction of these facilities is expected to take place in mixed phases alternating between the installation of several monopile type foundations followed by the installation of the upper structures then repeating this process throughout the project area until all 179 facilities have been completed. Each of the 179 temporary safety zones would be subject to enforcement individually, at different times, as construction progresses from one structure location to the next. The entire process of constructing an individual structure is expected to last approximately 48 hours. The Coast Guard would provide notice of each enforcement period via the Local Notice to Mariners and issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to notification of the beginning of construction at an individual site. The Coast Guard is proposing this rulemaking be effective

through May 1, 2027, in case there are any construction delays due to weather or other unforeseen circumstances. If the project is completed before May 1, 2027, however, enforcement of the safety zones would be suspended, and notice of such would be given via Local Notice to Mariners.

The positions of each individual safety zone proposed by this rulemaking are referred to using a unique alpha-numeric naming convention.

Consistent with size limitations on OCS safety zones in 33 CFR 147.15, the proposed safety zones would include the area within 500 meters around the center points of the positions provided in the table below while each structure is under active construction. The positions are expressed in Degree Minutes Second (DMS) based on World Geodetic System 84 (WGS 84).

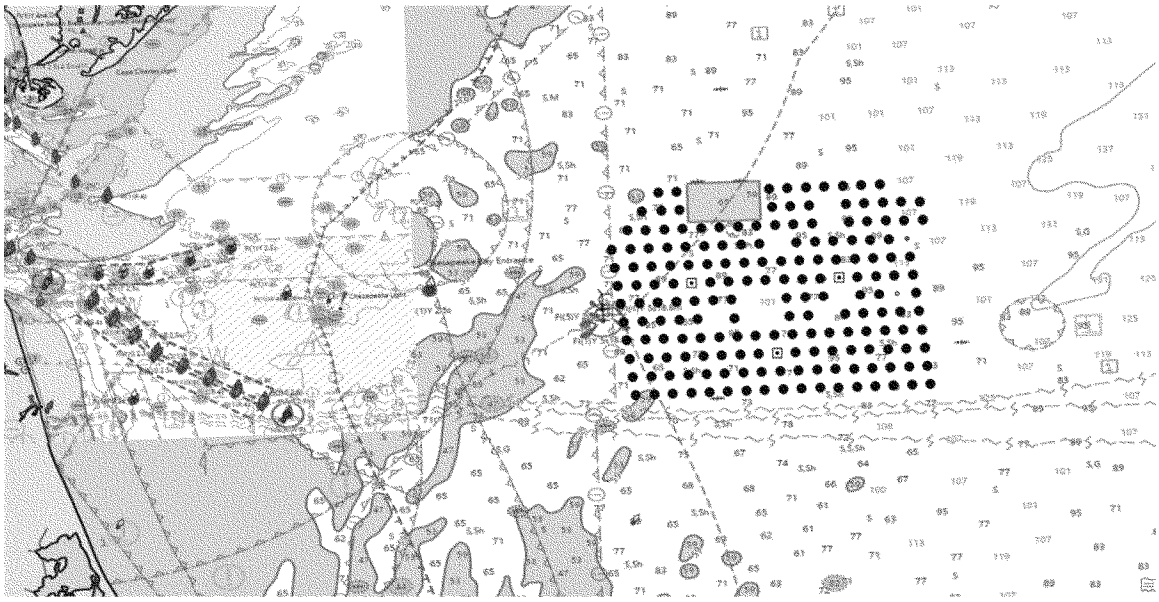
Name	Facility type	Latitude	Longitude
G1K11	WTG	36°52′10.43097128″ N	075°20′50.55112518″ W
G1M03	WTG	36°50′17.85976540″ N	075°28′04.02927152″ W
G1K12	WTG	36°52′10.59092864″ N	075°19′54.56958689″ W
G1M04	WTG	36°50′18.07627889″ N	075°27′08.07134847″ W
G1K13	WTG	36°52′10.74355846″ N	075°18′58.58792867″ W
G1M05	WTG	36°50′18.28547996″ N	075°26′12.11326220″ W
G1K14	WTG	36°52′10.88886719″ N	075°18′02.60615617″ W
G1M06	WTG	36°50′18.48736529″ N	075°25′16.15501832″ W
G1K15	WTG	36°52′11.02685154″ N	075°17′06.62427499″ W
G1M07	WTG	36°50′18.68193157″ N	075°24′20.19662240″ W
G1K16	WTG	36°52′11.15750822″ N	075°16′10.64229074″ W
G1M08	WTG	36°50′18.86918522″ N	075°23′24.23808009″ W
G1K17	WTG	36°52′11.28084368″ N	075°15′14.66020907″ W
G1M09	WTG	36°50′19.04912296″ N	075°22′28.27939699″ W
G1K18	WTG	36°52′11.39685463″ N	075°14′18.67803558″ W
G1M10	WTG	36°50′19.22174146″ N	075°21′32.32057869″ W
G1K19	WTG	36°52′11.50553780″ N	075°13′22.69577588″ W
G1M11	WTG	36°50′19.38704718″ N	075°20′36.36163083″ W
G1L03	WTG	36°51′13.39015630″ N	075°28′11.19226080″ W
G1M12	WTG	36°50′19.54503681″ N	075°19′40.40255901″ W
G1L04	WTG	36°51′13.60768637″ N	075°27′15.22311182″ W
G1M13	WTG	36°50′19.69570706″ N	075°18′44.44336883″ W
G1L05	WTG	36°51′13.81789345″ N	075°26′19.25379877″ W
G1M14	WTG	36°50′19.83906437″ N	075°17′48.48406591″ W
G1L06	WTG	36°51′14.02078396″ N	075°25′23.28432730″ W
G1M15	WTG	36°50′19.97510546″ N	075°16′52.52465182″ W
G1L07	WTG	36°51′14.21635459″ N	075°24′27.31470302″ W
G1M16	WTG	36°50′20.10382703″ N	075°15′56.56514024″ W
G1L08	WTG	36°51′14.40460203″ N	075°23′31.34493152″ W
G1M17	WTG	36°50′20.22523552″ N	075°15′00.60553275″ W
G1L09	WTG	36°51′14.58553272″ N	075°22′35.37501844″ W
G1M18	WTG	36°50′20.33932767″ N	075°14′04.64583497″ W
G1L10	WTG	36°51′14.75914336″ N	075°21′39.40496939″ W
G1M19	WTG	36°50′20.44610343″ N	075°13′08.68605250″ W
G1L12	WTG	36°51′15.08440100″ N	075°19′47.46448580″ W
G1N03	WTG	36°49′22.32924535″ N	075°27′56.82891331″ W
G1L13	WTG	36°51′15.23605115″ N	075°18′51.49406251″ W
G1N04	WTG	36°49′22.54474453″ N	075°27′00.88220767″ W
G1L14	WTG	36°51′15.38038104″ N	075°17′55.52352570″ W
G1N05	WTG	36°49′22.75293211″ N	075°26′04.93533961″ W
G1L15	WTG	36°51′15.51738738″ N	075°16′59.55288098″ W
G1N06	WTG	36°49′22.95380477″ N	075°25′08.98831473″ W
G1L16	WTG	36°51′15.64707661″ N	075°16′03.58213399″ W
G1N07	WTG	36°49′23.14736895″ N	075°24′13.04113865″ W
G1L17	WTG	36°51′15.76944545″ N	075°15′07.61129032″ W
G1N08	WTG	36°49′23.33362134″ N	075°23′17.09381697″ W
G1L18	WTG	36°51′15.88449062″ N	075°14′11.64035558″ W
G1N09	WTG	36°49′23.51255863″ N	075°22′21.14635529″ W
G1L19	WTG	36°51′15.99221858″ N	075°13′15.66933541″ W
G1N10	WTG	36°49′23.68418726″ N	075°21′25.19875519″ W
G1N11	WTG	36°49′23.84850393″ N	075°20′29.25103034″ W
G2F06	WTG	36°55′51.61831765″ N	075°25′59.09646230″ W
G1N12	WTG	36°49′24.00550534″ N	075°19′33.30318231″ W
G2F07	WTG	36°55′51.81892515″ N	075°25′03.07058271″ W
G1N13	WTG	36°49′24.15519793″ N	075°18′37.35521671″ W
G2F08	WTG	36°55′52.01218908″ N	075°24′07.04455187″ W
G1N14	WTG	36°49′24.29757841″ N	075°17′41.40713915″ W
G2F09	WTG	36°55′52.19811586″ N	075°23′11.01837544″ W
G1N15	WTG	36°49′24.43264349″ N	075°16′45.45895522″ W
G2F10	WTG	36°55′52.37670219″ N	075°22′14.99205905″ W
G1N16	WTG	36°49′24.56039962″ N	075°15′49.51067054″ W
G2F11	WTG	36°55′52.54794477″ N	075°21′18.96560832″ W
G1N17	WTG	36°49′24.68084352″ N	075°14′53.56229072″ W
G2G03	WTG	36°54′55.47610540″ N	075°28′39.95488075″ W

Name	Facility type	Latitude	Longitude
G1N18	WTG	36°49′24.79397189″ N	075°13′57.61382134″ W
G2G04	WTG	36°54′55.69770649″ N	075°27′43.94075021″ W
G1N19	WTG	36°49′24.89979121″ N	075°13′01.66526804″ W
G2G05	WTG	36°54′55.91197477″ N	075°26′47.92645237″ W
G2B06	WTG	36°59′33.71078023″ N	075°26′27.78408472″ W
G2G06	WTG	36°54′56.11890692″ N	075°25′51.91199284″ W
G2B07	WTG	36°59′33.91543395″ N	075°25′31.71304424″ W
G2G08	WTG	36°54′56.51075936″ N	075°23′59.88261121″ W
G2C05	WTG	36°58′38.57467997″ N	075°27′20.62031850″ W
G2G09	WTG	36°54′56.69568276″ N	075°23′03.86770040″ W
G2C06	WTG	36°58′38.21250366″ N	075°26′20.58758650″ W
G2G10	WTG	36°54′56.87326655″ N	075°22′07.85265041″ W
G2C07	WTG	36°58′38.41606238″ N	075°25′24.55006971″ W
G2H03	WTG	36°53′59.94685093″ N	075°28′32.77985639″ W
G2D04	WTG	36°57′42.25404052″ N	075°28′05.53076883″ W
G2H04	WTG	36°54′00.16743776″ N	075°27′36.77698565″ W
G2D05	WTG	36°57′42.47136588″ N	075°27′09.48264513″ W
G2H05	WTG	36°54′00.38069261″ N	075°26′40.77394842″ W
G2D06	WTG	36°57′42.68134287″ N	075°26′13.43435729″ W
G2H06	WTG	36°54′00.58661217″ N	075°25′44.77075028″ W
G2D07	WTG	36°57′42.88396818″ N	075°25′17.38591093″ W
G2H07	WTG	36°54′00.78520287″ N	075°24′48.76739692″ W
G2D08	WTG	36°57′43.07924823″ N	075°24′21.33731172″ W
G2H08	WTG	36°54′00.97646139″ N	075°23′52.76389394″ W
G2D09	WTG	36°57′43.26717972″ N	075°23′25.28856531″ W
G2H09	WTG	36°54′01.16038445″ N	075°22′56.76024694″ W
G2D10	WTG	36°57′43.44775934″ N	075°22′29.23967731″ W
G2J03	WTG	36°53′04.41747586″ N	075°28′25.56744405″ W
G2D11	WTG	36°57′43.62099353″ N	075°21′33.19065340″ W
G2J04	WTG	36°53′04.63703769″ N	075°27′29.57582449″ W
G2E03	WTG	36°56′46.50113710″ N	075°28′54.35420276″ W
G2J05	WTG	36°53′04.84927487″ N	075°26′33.58403927″ W
G2E04	WTG	36°56′46.72478481″ N	075°27′58.31753397″ W
G2J06	WTG	36°53′05.05418408″ N	075°25′37.59209399″ W
G2E05	WTG	36°56′46.94108831″ N	075°27′02.28069620″ W
G2J07	WTG	36°53′05.25176202″ N	075°24′41.59999425″ W
G2E06	WTG	36°56′47.15004427″ N	075°26′06.24369509″ W
G2J09	WTG	36°53′05.62494006″ N	075°22′49.61534996″ W
G2E07	WTG	36°56′47.35165913″ N	075°25′10.20653631″ W
G2K03	WTG	36°52′08.88765106″ N	075°28′18.39844436″ W
G2E08	WTG	36°56′47.54592958″ N	075°24′14.16922549″ W
G2K04	WTG	36°52′09.10620073″ N	075°27′22.41806364″ W
G2E09	WTG	36°56′47.73285231″ N	075°23′18.13176420″ W
G2K05	WTG	36°52′09.31742657″ N	075°26′26.43752208″ W
G2E10	WTG	36°56′47.91243374″ N	075°22′22.09416621″ W
G2K06	WTG	36°52′09.52132527″ N	075°25′30.45682126″ W
G2E11	WTG	36°56′48.08467058″ N	075°21′26.05643310″ W
G2K07	WTG	36°52′09.71790326″ N	075°24′34.47596683″ W
G2F03	WTG	36°55′50.97245702″ N	075°28′47.17314135″ W
G2K08	WTG	36°52′09.90715725″ N	075°23′38.49496439″ W
G2F04	WTG	36°55′51.19508514″ N	075°27′51.14774524″ W
G2K09	WTG	36°52′10.08908391″ N	075°22′42.51381954″ W
G2F05	WTG	36°55′51.41036987″ N	075°26′55.12218502″ W
G3F14	WTG	36°55′53.01763543″ N	075°18′30.88550656″ W
G3B12	WTG	36°59′34.82834796″ N	075°20′51.35563765″ W
G3F15	WTG	36°55′53.15951871″ N	075°17′34.85857490″ W
G3B13	WTG	36°59′34.98885750″ N	075°19′55.28375508″ W
G3F16	WTG	36°55′53.29406124″ N	075°16′38.83153710″ W
G3B14	WTG	36°59′35.14201327″ N	075°18′59.21175196″ W
G3F19	WTG	36°55′53.65364064″ N	075°13′50.74984322″ W
G3B15	WTG	36°59′35.28781198″ N	075°18′03.13963394″ W
G3G11	WTG	36°54′57.04351716″ N	075°21′11.83746691″ W
G3B16	WTG	36°59′35.42625034″ N	075°17′07.06740666″ W
G3G12	WTG	36°54′57.20643128″ N	075°20′15.82215551″ W
G3B17	WTG	36°59′35.55733479″ N	075°16′10.99507580″ W
G3G13	WTG	36°54′57.36200563″ N	075°19′19.80672183″ W
G3B18	WTG	36°59′35.68106205″ N	075°15′14.92264701″ W
G3G14	WTG	36°54′57.51024665″ N	075°18′23.79117153″ W
G3C12	WTG	36°58′39.32403511″ N	075°20′44.22693929″ W
G3G16	WTG	36°54′57.78471551″ N	075°16′31.75974356″ W
G3C13	WTG	36°58′39.48355669″ N	075°19′48.16635951″ W
G3G17	WTG	36°54′57.91094652″ N	075°15′35.74387716″ W
G3C14	WTG	36°58′39.63572535″ N	075°18′52.10565996″ W
G3G18	WTG	36°54′58.02984078″ N	075°14′39.72791666″ W

Name	Facility type	Latitude	Longitude
G3C16	WTG	36°58′39.91800046″ N	075°16′59.98392414″ W
G3G19	WTG	36°54′58.14139499″ N	075°13′43.71186768″ W
G3C17	WTG	36°58′40.04811007″ N	075°16′03.92289920″ W
G3H12	WTG	36°54′01.66816614″ N	075°20′08.74849831″ W
G3C18	WTG	36°58′40.17086334″ N	075°15′07.86177303″ W
G3H13	WTG	36°54′01.82276296″ N	075°19′12.74433164″ W
G3C19	WTG	36°58′40.28626670″ N	075°14′11.80055940″ W
G3H14	WTG	36°54′01.97002729″ N	075°18′16.74004507″ W
G3C20	WTG	36°58′40.39431689″ N	075°13′15.73925991″ W
G3H16	WTG	36°54′02.24255501″ N	075°16′24.73115496″ W
G3D12	WTG	36°57′43.78687899″ N	075°20′37.14149923″ W
G3H17	WTG	36°54′02.36782157″ N	075°15′28.72655864″ W
G3D13	WTG	36°57′43.94541242″ N	075°19′41.09222040″ W
G3H19	WTG	36°54′02.59635341″ N	075°13′36.71709160″ W
G3D14	WTG	36°57′44.09660027″ N	075°18′45.04281857″ W
G3J12	WTG	36°53′06.12974216″ N	075°20′01.63737188″ W
G3D16	WTG	36°57′44.37692600″ N	075°16′52.94368860″ W
G3J13	WTG	36°53′06.28335394″ N	075°19′05.64446363″ W
G3D17	WTG	36°57′44.50606705″ N	075°15′56.89396774″ W
G3J15	WTG	36°53′06.56858897″ N	075°17′13.65830753″ W
G3D18	WTG	36°57′44.62785910″ N	075°15′00.84415047″ W
G3J16	WTG	36°53′06.70021537″ N	075°16′17.66507094″ W
G3D19	WTG	36°57′44.74230209″ N	075°14′04.79424245″ W
G3J17	WTG	36°53′06.82450998″ N	075°15′21.67173614″ W
G3D20	WTG	36°57′44.84939275″ N	075°13′08.74424932″ W
G3J18	WTG	36°53′06.94147924″ N	075°14′25.67830877″ W
G3E13	WTG	36°56′48.40710702″ N	075°19′33.98058407″ W
G3J19	WTG	36°53′07.05111989″ N	075°13′29.68479445″ W
G3E14	WTG	36°56′48.55730976″ N	075°18′37.94247944″ W
T1L11	OSS	36°51′14.92543064″ N	075°20′43.43478996″ W
G3E15	WTG	36°56′48.70016447″ N	075°17′41.90426225″ W
T2G07	OSS	36°54′56.31849964″ N	075°24′55.89737723″ W
G3E16	WTG	36°56′48.83567758″ N	075°16′45.86593816″ W
T3G15	OSS	36°54′57.65115104″ N	075°17′27.77551023″ W
G3E17	WTG	36°56′48.96384581″ N	075°15′49.82751279″ W
G3E18	WTG	36°56′49.08466587″ N	075°14′53.78899178″ W
G3F12	WTG	36°55′52.71185004″ N	075°20′22.93902891″ W
G3F13	WTG	36°55′52.86841469″ N	075°19′26.91232645″ W

The positions of the 179 proposed safety zones are shown on the chartlets below. For scaling purposes, the grid spacing is 0.95 x 0.8 NM.

BILLING CODE 9110–04–P



(Small scale chartlet showing the positions of the proposed safety zones.)

(Large scale chartlet showing the positions of the proposed safety zones with alpha-numeric naming convention.)

BILLING CODE 9110–04–C

Navigation in the vicinity of the proposed safety zones consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows, and recreational vessels.

When subject to enforcement, no unauthorized vessel or person would be permitted to enter a safety zone without obtaining permission from the Fifth Coast Guard District Commander or a designated representative. Requests for entry into the safety zone would be considered and reviewed on a case-by-case basis. Persons or vessels seeking to enter the safety zone must request authorization from the Fifth Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 757–398–6391 (Fifth Coast Guard District Command Center). If permission is granted, all persons and vessels shall comply with the instructions of the Fifth Coast Guard District Commander or designated representative.

The proposed regulatory text 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. A summary of our analyses based on these statutes and Executive orders follows.

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 Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

Aligning with 33 CFR 147.15, the safety zones established would extend to a maximum distance of 500-meters around the OCS facility measured from its center point. Vessel traffic would be able to safely transit around each of the proposed safety zones, which would occupy a small, designated area in the Atlantic Ocean, without significant impediment to their voyage. These safety zones would provide for the safety of life, and the protection of property, and of the environment during the construction of each structure, in accordance with Coast Guard maritime safety missions.

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.

This proposed rule may affect owners or operators of vessels intending to transit or anchor in the CVOWCWF, some of which might be small entities. However, these safety zones would not have a significant economic impact on a substantial number of these entities because they would be subject to enforcement only for short, temporary periods, they would allow for deviation requests, and would not be expected to impact vessel transit significantly. Regarding the enforcement period, although these safety zones would be in effect from May 1, 2024, through May 1, 2027, vessels would only be prohibited from entering or remaining in the regulated zone during periods of actual construction activity corresponding to the period of enforcement. We expect the enforcement period at each location to last approximately 48 hours as construction progresses from one structure location to the next throughout the mixed phases. Additionally, vessel traffic could pass safely around each safety zone using an alternate route. Use of an alternate route likely would cause minimal delay for the vessel in reaching their destination depending on other traffic in the area and vessel speed. Vessels would also be able to request deviation from this rule to transit through a safety zone. Such requests would be considered on a case by-case basis and may be authorized by the Fifth Coast Guard District Commander or a designated representative. For these reasons, the Coast Guard expects any impact of this rulemaking establishing a temporary safety zone around these OCS facilities to be minimal and have no significant economic impact on small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (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 (Pub. L. 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 the establishment of a safety zone around an OCS facility to protect life, property, and the marine environment. Normally such actions are categorically excluded from further review under paragraph L60 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–2023–0985 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. 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 147

Continental shelf, Marine safety, Navigation (waters).

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 147.T01–0985 to read as follows:

§ 147.T01–0985 Safety Zones; Coastal Virginial Offshore Wind—Commercial Wind Farm Project Area, Outer Continental Shelf, Lease OCS–A 0483, Offshore Virginia, Atlantic Ocean.

(a) *Description.* The area within 500 meters of the center point of each of the positions provided in the table below is an individual safety zone:

Name	Facility type	Latitude	Longitude
G1K11	WTG	36°52′10.43097128″ N	075°20′50.55112518″ W
G1M03	WTG	36°50′17.85976540″ N	075°28′04.02927152″ W
G1K12	WTG	36°52′10.59092864″ N	075°19′54.56958689″ W
G1M04	WTG	36°50′18.07627889″ N	075°27′08.07134847″ W
G1K13	WTG	36°52′10.74355846″ N	075°18′58.58792867″ W
G1M05	WTG	36°50′18.28547996″ N	075°26′12.11326220″ W
G1K14	WTG	36°52′10.88886719″ N	075°18′02.60615617″ W
G1M06	WTG	36°50′18.48736529″ N	075°25′16.15501832″ W
G1K15	WTG	36°52′11.02685154″ N	075°17′06.62427499″ W
G1M07	WTG	36°50′18.68193157″ N	075°24′20.19662240″ W
G1K16	WTG	36°52′11.15750822″ N	075°16′10.64229074″ W
G1M08	WTG	36°50′18.86918522″ N	075°23′24.23808009″ W
G1K17	WTG	36°52′11.28084368″ N	075°15′14.66020907″ W
G1M09	WTG	36°50′19.04912296″ N	075°22′28.27939699″ W
G1K18	WTG	36°52′11.39685463″ N	075°14′18.67803558″ W
G1M10	WTG	36°50′19.22174146″ N	075°21′32.32057869″ W
G1K19	WTG	36°52′11.50553780″ N	075°13′22.69577588″ W
G1M11	WTG	36°50′19.38704718″ N	075°20′36.36163083″ W
G1L03	WTG	36°51′13.39015630″ N	075°28′11.19226080″ W
G1M12	WTG	36°50′19.54503681″ N	075°19′40.40255901″ W
G1L04	WTG	36°51′13.60768637″ N	075°27′15.22311182″ W
G1M13	WTG	36°50′19.69570706″ N	075°18′44.44336883″ W
G1L05	WTG	36°51′13.81789345″ N	075°26′19.25379877″ W
G1M14	WTG	36°50′19.83906437″ N	075°17′48.48406591″ W
G1L06	WTG	36°51′14.02078396″ N	075°25′23.28432730″ W
G1M15	WTG	36°50′19.97510546″ N	075°16′52.52465182″ W
G1L07	WTG	36°51′14.21635459″ N	075°24′27.31470302″ W
G1M16	WTG	36°50′20.10382703″ N	075°15′56.56514024″ W
G1L08	WTG	36°51′14.40460203″ N	075°23′31.34493152″ W
G1M17	WTG	36°50′20.22523552″ N	075°15′00.60553275″ W
G1L09	WTG	36°51′14.58553272″ N	075°22′35.37501844″ W
G1M18	WTG	36°50′20.33932767″ N	075°14′04.64583497″ W
G1L10	WTG	36°51′14.75914336″ N	075°21′39.40496939″ W
G1M19	WTG	36°50′20.44610343″ N	075°13′08.68605250″ W
G1L12	WTG	36°51′15.08440100″ N	075°19′47.46448580″ W
G1N03	WTG	36°49′22.32924535″ N	075°27′56.82891331″ W
G1L13	WTG	36°51′15.23605115″ N	075°18′51.49406251″ W
G1N04	WTG	36°49′22.54474453″ N	075°27′00.88220767″ W
G1L14	WTG	36°51′15.38038104″ N	075°17′55.52352570″ W
G1N05	WTG	36°49′22.75293211″ N	075°26′04.93533961″ W
G1L15	WTG	36°51′15.51738738″ N	075°16′59.55288098″ W

Name	Facility type	Latitude	Longitude
G1N06	WTG	36°49′22.95380477″ N	075°25′08.98831473″ W
G1L16	WTG	36°51′15.64707661″ N	075°16′03.58213399″ W
G1N07	WTG	36°49′23.14736895″ N	075°24′13.04113865″ W
G1L17	WTG	36°51′15.76944545″ N	075°15′07.61129032″ W
G1N08	WTG	36°49′23.33362134″ N	075°23′17.09381697″ W
G1L18	WTG	36°51′15.88449062″ N	075°14′11.64035558″ W
G1N09	WTG	36°49′23.51255863″ N	075°22′21.14635529″ W
G1L19	WTG	36°51′15.99221858″ N	075°13′15.66933541″ W
G1N10	WTG	36°49′23.68418726″ N	075°21′25.19875519″ W
G1N11	WTG	36°49′23.84850393″ N	075°20′29.25103034″ W
G2F06	WTG	36°55′51.61831765″ N	075°25′59.09646230″ W
G1N12	WTG	36°49′24.00550534″ N	075°19′33.30318231″ W
G2F07	WTG	36°55′51.81892515″ N	075°25′03.07058271″ W
G1N13	WTG	36°49′24.15519793″ N	075°18′37.35521671″ W
G2F08	WTG	36°55′52.01218908″ N	075°24′07.04455187″ W
G1N14	WTG	36°49′24.29757841″ N	075°17′41.40713915″ W
G2F09	WTG	36°55′52.19811586″ N	075°23′11.01837544″ W
G1N15	WTG	36°49′24.43264349″ N	075°16′45.45895522″ W
G2F10	WTG	36°55′52.37670219″ N	075°22′14.99205905″ W
G1N16	WTG	36°49′24.56039962″ N	075°15′49.51067054″ W
G2F11	WTG	36°55′52.54794477″ N	075°21′18.96560832″ W
G1N17	WTG	36°49′24.68084352″ N	075°14′53.56229072″ W
G2G03	WTG	36°54′55.47610540″ N	075°28′39.95488075″ W
G1N18	WTG	36°49′24.79397189″ N	075°13′57.61382134″ W
G2G04	WTG	36°54′55.69770649″ N	075°27′43.94075021″ W
G1N19	WTG	36°49′24.89979121″ N	075°13′01.66526804″ W
G2G05	WTG	36°54′55.91197477″ N	075°26′47.92645237″ W
G2B06	WTG	36°59′33.71078023″ N	075°26′27.78408472″ W
G2G06	WTG	36°54′56.11890692″ N	075°25′51.91199284″ W
G2B07	WTG	36°59′33.91543395″ N	075°25′31.71304424″ W
G2G08	WTG	36°54′56.51075936″ N	075°23′59.88261121″ W
G2C05	WTG	36°58′38.57467997″ N	075°27′20.62031850″ W
G2G09	WTG	36°54′56.69568276″ N	075°23′03.86770040″ W
G2C06	WTG	36°58′38.21250366″ N	075°26′20.58758650″ W
G2G10	WTG	36°54′56.87326655″ N	075°22′07.85265041″ W
G2C07	WTG	36°58′38.41606238″ N	075°25′24.55006971″ W
G2H03	WTG	36°53′59.94685093″ N	075°28′32.77985639″ W
G2D04	WTG	36°57′42.25404052″ N	075°28′05.53076883″ W
G2H04	WTG	36°54′00.16743776″ N	075°27′36.77698565″ W
G2D05	WTG	36°57′42.47136588″ N	075°27′09.48264513″ W
G2H05	WTG	36°54′00.38069261″ N	075°26′40.77394842″ W
G2D06	WTG	36°57′42.68134287″ N	075°26′13.43435729″ W
G2H06	WTG	36°54′00.58661217″ N	075°25′44.77075028″ W
G2D07	WTG	36°57′42.88396818″ N	075°25′17.38591093″ W
G2H07	WTG	36°54′00.78520287″ N	075°24′48.76739692″ W
G2D08	WTG	36°57′43.07924823″ N	075°24′21.33731172″ W
G2H08	WTG	36°54′00.97646139″ N	075°23′52.76389394″ W
G2D09	WTG	36°57′43.26717972″ N	075°23′25.28856531″ W
G2H09	WTG	36°54′01.16038445″ N	075°22′56.76024694″ W
G2D10	WTG	36°57′43.44775934″ N	075°22′29.23967731″ W
G2J03	WTG	36°53′04.41747586″ N	075°28′25.56744405″ W
G2D11	WTG	36°57′43.62099353″ N	075°21′33.19065340″ W
G2J04	WTG	36°53′04.63703769″ N	075°27′29.57582449″ W
G2E03	WTG	36°56′46.50113710″ N	075°28′54.35420276″ W
G2J05	WTG	36°53′04.84927487″ N	075°26′33.58403927″ W
G2E04	WTG	36°56′46.72478481″ N	075°27′58.31753397″ W
G2J06	WTG	36°53′05.05418408″ N	075°25′37.59209399″ W
G2E05	WTG	36°56′46.94108831″ N	075°27′02.28069620″ W
G2J07	WTG	36°53′05.25176202″ N	075°24′41.59999425″ W
G2E06	WTG	36°56′47.15004427″ N	075°26′06.24369509″ W
G2J09	WTG	36°53′05.62494006″ N	075°22′49.61534996″ W
G2E07	WTG	36°56′47.35165913″ N	075°25′10.20653631″ W
G2K03	WTG	36°52′08.88765106″ N	075°28′18.39844436″ W
G2E08	WTG	36°56′47.54592958″ N	075°24′14.16922549″ W
G2K04	WTG	36°52′09.10620073″ N	075°27′22.41806364″ W
G2E09	WTG	36°56′47.73285231″ N	075°23′18.13176420″ W
G2K05	WTG	36°52′09.31742657″ N	075°26′26.43752208″ W
G2E10	WTG	36°56′47.91243374″ N	075°22′22.09416621″ W
G2K06	WTG	36°52′09.52132527″ N	075°25′30.45682126″ W
G2E11	WTG	36°56′48.08467058″ N	075°21′26.05643310″ W
G2K07	WTG	36°52′09.71790326″ N	075°24′34.47596683″ W
G2F03	WTG	36°55′50.97245702″ N	075°28′47.17314135″ W
G2K08	WTG	36°52′09.90715725″ N	075°23′38.49496439″ W
G2F04	WTG	36°55′51.19508514″ N	075°27′51.14774524″ W

Name	Facility type	Latitude	Longitude
G2K09	WTG	36°52′10.08908391″ N	075°22′42.51381954″ W
G2F05	WTG	36°55′51.41036987″ N	075°26′55.12218502″ W
G3F14	WTG	36°55′53.01763543″ N	075°18′30.88550656″ W
G3B12	WTG	36°59′34.82834796″ N	075°20′51.35563765″ W
G3F15	WTG	36°55′53.15951871″ N	075°17′34.85857490″ W
G3B13	WTG	36°59′34.98885750″ N	075°19′55.28375508″ W
G3F16	WTG	36°55′53.29406124″ N	075°16′38.83153710″ W
G3B14	WTG	36°59′35.14201327″ N	075°18′59.21175196″ W
G3F19	WTG	36°55′53.65364064″ N	075°13′50.74984322″ W
G3B15	WTG	36°59′35.28781198″ N	075°18′03.13963394″ W
G3G11	WTG	36°54′57.04351716″ N	075°21′11.83746691″ W
G3B16	WTG	36°59′35.42625034″ N	075°17′07.06740666″ W
G3G12	WTG	36°54′57.20643128″ N	075°20′15.82215551″ W
G3B17	WTG	36°59′35.55733479″ N	075°16′10.99507580″ W
G3G13	WTG	36°54′57.36200563″ N	075°19′19.80672183″ W
G3B18	WTG	36°59′35.68106205″ N	075°15′14.92264701″ W
G3G14	WTG	36°54′57.51024665″ N	075°18′23.79117153″ W
G3C12	WTG	36°58′39.32403511″ N	075°20′44.22693929″ W
G3G16	WTG	36°54′57.78471551″ N	075°16′31.75974356″ W
G3C13	WTG	36°58′39.48355669″ N	075°19′48.16635951″ W
G3G17	WTG	36°54′57.91094652″ N	075°15′35.74387716″ W
G3C14	WTG	36°58′39.63572535″ N	075°18′52.10565996″ W
G3G18	WTG	36°54′58.02984078″ N	075°14′39.72791666″ W
G3C16	WTG	36°58′39.91800046″ N	075°16′59.98392414″ W
G3G19	WTG	36°54′58.14139499″ N	075°13′43.71186768″ W
G3C17	WTG	36°58′40.04811007″ N	075°16′03.92289920″ W
G3H12	WTG	36°54′01.66816614″ N	075°20′08.74849831″ W
G3C18	WTG	36°58′40.17086334″ N	075°15′07.86177303″ W
G3H13	WTG	36°54′01.82276296″ N	075°19′12.74433164″ W
G3C19	WTG	36°58′40.28626670″ N	075°14′11.80055940″ W
G3H14	WTG	36°54′01.97002729″ N	075°18′16.74004507″ W
G3C20	WTG	36°58′40.39431689″ N	075°13′15.73925991″ W
G3H16	WTG	36°54′02.24255501″ N	075°16′24.73115496″ W
G3D12	WTG	36°57′43.78687899″ N	075°20′37.14149923″ W
G3H17	WTG	36°54′02.36782157″ N	075°15′28.72655864″ W
G3D13	WTG	36°57′43.94541242″ N	075°19′41.09222040″ W
G3H19	WTG	36°54′02.59635341″ N	075°13′36.71709160″ W
G3D14	WTG	36°57′44.09660027″ N	075°18′45.04281857″ W
G3J12	WTG	36°53′06.12974216″ N	075°20′01.63737188″ W
G3D16	WTG	36°57′44.37692600″ N	075°16′52.94368860″ W
G3J13	WTG	36°53′06.28335394″ N	075°19′05.64446363″ W
G3D17	WTG	36°57′44.50606705″ N	075°15′56.89396774″ W
G3J15	WTG	36°53′06.56858897″ N	075°17′13.65830753″ W
G3D18	WTG	36°57′44.62785910″ N	075°15′00.84415047″ W
G3J16	WTG	36°53′06.70021537″ N	075°16′17.66507094″ W
G3D19	WTG	36°57′44.74230209″ N	075°14′04.79424245″ W
G3J17	WTG	36°53′06.82450998″ N	075°15′21.67173614″ W
G3D20	WTG	36°57′44.84939275″ N	075°13′08.74424932″ W
G3J18	WTG	36°53′06.94147924″ N	075°14′25.67830877″ W
G3E13	WTG	36°56′48.40710702″ N	075°19′33.98058407″ W
G3J19	WTG	36°53′07.05111989″ N	075°13′29.68479445″ W
G3E14	WTG	36°56′48.55730976″ N	075°18′37.94247944″ W
T1L11	OSS	36°51′14.92543064″ N	075°20′43.43478996″ W
G3E15	WTG	36°56′48.70016447″ N	075°17′41.90426225″ W
T2G07	OSS	36°54′56.31849964″ N	075°24′55.89737723″ W
G3E16	WTG	36°56′48.83567758″ N	075°16′45.86593816″ W
T3G15	OSS	36°54′57.65115104″ N	075°17′27.77551023″ W
G3E17	WTG	36°56′48.96384581″ N	075°15′49.82751279″ W
G3E18	WTG	36°56′49.08466587″ N	075°14′53.78899178″ W
G3F12	WTG	36°55′52.71185004″ N	075°20′22.93902891″ W
G3F13	WTG	36°55′52.86841469″ N	075°19′26.91232645″ W

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Fifth Coast Guard District Commander in the enforcement of the safety zones.

(c) *Regulations.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel, as defined in 33 CFR 147.20;

(2) A vessel authorized by the Fifth Coast Guard District Commander or a designated representative.

(d) *Request for Permission.* Persons or vessels seeking to enter the safety zone must request authorization from the Fifth Coast Guard District Commander or a designated representative. If permission is granted, all persons and

vessels must comply with lawful instructions of the Fifth Coast Guard District Commander or designated representative via VHF–FM channel 16 or by phone at 757–398–6391 (Fifth Coast Guard District Command Center).

(e) *Effective and enforcement periods.* This section will be in effect from May 1, 2024, through 11:59 p.m. on May 1, 2027. Individual safety zones designated in the table in subparagraph (a) will only be subject to enforcement, however, during active construction or other circumstances which may create a hazard to navigation as determined by the Fifth Coast Guard District Commander. The Fifth Coast Guard District Commander will provide notification of the exact dates and times each safety zone is subject to enforcement in advance of each enforcement period for each of the locations listed above, in paragraph (a) of this section. Notifications will be made to the local maritime community through the Local Notice to Mariners and the Coast Guard will issue a Broadcast Notice to Mariners via marine channel 16 (VHF–FM) as soon as practicable in response to an emergency. If the entire project is completed before May 1, 2027, enforcement of the safety zones will be suspended, and notice given via Local Notice to Mariners. The Fifth Coast Guard District Local Notice to Mariners can be found at: *https://www.navcen.uscg.gov.*

Dated: January 22, 2024.

S.N. Gilreath,

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

[FR Doc. 2024–01546 Filed 1–25–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R06–OAR–2023–0536; FRL–11640–01–R6]

Clean Air Act Reclassification of the San Antonio, Dallas-Fort Worth, and Houston-Galveston Brazoria Ozone Nonattainment Areas; TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to grant a request from the Governor of Texas to reclassify the San Antonio, Dallas-Fort Worth (DFW), and Houston-Galveston Brazoria (HGB) ozone nonattainment areas from Moderate to Serious for the 2015 ozone National Ambient Air Quality Standards (NAAQS). The EPA is also herein outlining its interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing the following requirements related to the prior reclassification level for an ozone nonattainment area: a demonstration of attainment by the prior attainment date; a Reasonably Available Control Measures (RACM) analysis tied to the prior attainment date; and contingency measures specifically related to the area's failure to attain by the prior attainment date. The EPA is also proposing deadlines for the Texas Commission on Environmental Quality (TCEQ or State) to submit revisions to the State Implementation Plan (SIP) addressing the Serious area requirements and for the first transportation control demonstrations for these areas. The EPA is also proposing deadlines for implementation of new Reasonably Available Control Technology (RACT) rules and for any new or revised Enhanced vehicle Inspection and Maintenance (I/M) programs.

DATES: Written comments should be received on or before February 26, 2024.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2023–0536, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Ms. Carrie Paige, 214–665–6521, *paige.carrie@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov.* While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Paige, EPA Region 6 Office, Infrastructure and Ozone Section, 214–665–6521, *paige.carrie@epa.gov.* The EPA encourages the public to submit comments via *https://www.regulations.gov.* Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'' or ''our'' is used, we mean the EPA.

I. EPA's Proposed Action

The EPA is proposing to grant a request submitted by Texas Governor Greg Abbott to reclassify the San Antonio, DFW, and HGB ozone nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS. The EPA is also herein outlining its interpretation that following reclassification, a state is no longer required to submit SIP revisions addressing the following requirements related to the prior reclassification level for an ozone nonattainment area: (1) a demonstration of attainment by the prior attainment date, (2) a RACM analysis tied to the prior attainment date, and (3) contingency measures specifically related to the area's failure to attain by the prior attainment date. Accordingly, if EPA were to finalize its reclassification of the San Antonio, DFW, and HGB areas to Serious for the 2015 ozone NAAQS, Texas would no longer be required to submit these three identified SIP elements as they relate to the Moderate classification level, and EPA's October 18, 2023, Finding of Failure to Submit [1] would be mooted as to these specific SIP elements.

The EPA is also proposing a deadline for the TCEQ to submit revisions to the SIP addressing the Serious area requirements for these areas; specifically, the EPA is proposing and taking comment on a range of deadlines, from 12 to 18 months from the effective date of the EPA's final rule reclassifying the San Antonio, DFW, and HGB areas as Serious, for the TCEQ to submit the revised SIPs addressing the Serious area requirements for these nonattainment areas. The EPA is also proposing a deadline for implementation of new RACT rules as expeditiously as practicable but no later than January 1,

[1] 88 FR 71757, (October 18, 2023). Henceforth referred to as the ''October 2023 findings.''

2026. Additionally, the EPA is proposing a deadline for any new or revised Enhanced vehicle I/M programs to be fully implemented as expeditiously as practicable but no later than four years after the effective date of EPA's final rule reclassifying these areas as Serious. Lastly, the EPA is proposing a deadline for the first transportation control demonstration, as required by CAA section 182(c)(5), to be submitted two years after the attainment demonstration due date.

II. Background

On October 1, 2015, the EPA strengthened the primary and secondary eight-hour ozone NAAQS from 0.075 parts per million (ppm) to 0.070 ppm (''2015 ozone NAAQS'').[2] In accordance with CAA section 107(d), the EPA must designate an area ''nonattainment'' if it is violating the NAAQS or if it is contributing to a violation of the NAAQS in a nearby area. With respect to the ozone NAAQS, the EPA further classifies nonattainment areas as Marginal, Moderate, Serious, Severe, or Extreme, depending upon the ozone design value (DV) for the area.[3] See CAA section 181(a)(1). As a general matter, higher classified ozone nonattainment areas are subject to a greater number of, and more stringent, CAA planning requirements than lower classified areas and are allowed more time to attain the ozone NAAQS. See, generally, subpart 2 of part D of title I of the CAA.

Effective August 3, 2018, the EPA designated and classified the DFW and HGB areas under the CAA as Marginal nonattainment for the 2015 ozone NAAQS.[4] Effective September 24, 2018, the EPA designated and classified the San Antonio area under the CAA as Marginal nonattainment for the 2015 ozone NAAQS.[5] The EPA's classification of the San Antonio, DFW, and HGB ozone nonattainment areas as Marginal established a requirement that these areas attain the 2015 ozone NAAQS as expeditiously as practicable, but no later than three years from the effective date of designation, *i.e.,* August 3, 2021, for the DFW and HGB areas and September 24, 2021, for the San Antonio area. Consistent with CAA section 181(b)(2), the EPA is required to determine whether an area attained the ozone NAAQS by the applicable attainment date.

In October 2022, the EPA determined that the DFW and HGB areas failed to attain the 2015 ozone NAAQS by the August 3, 2021, attainment date and reclassified these areas as Moderate for the 2015 ozone NAAQS with an attainment date of August 3, 2024. In that same action, the EPA also determined that the San Antonio area failed to attain the 2015 ozone NAAQS by the September 24, 2021, attainment date and reclassified the area as Moderate for the 2015 ozone NAAQS with an attainment date of September 24, 2024 (see 87 FR 60897, October 7, 2022).

On October 13, 2023, the EPA signed a finding that 11 states failed to submit SIP revisions required by the CAA in a timely manner for certain nonattainment areas reclassified as Moderate for the 2015 ozone NAAQS.[6] This final action was effective on November 17, 2023, and triggered certain CAA deadlines for the imposition of sanctions if a state does not submit a complete SIP addressing the outstanding requirements and for the EPA to promulgate a Federal Implementation Plan (FIP) if the EPA does not approve the state's SIP revision addressing the outstanding requirements.[7]

Texas is included in the October 2023 findings for failing to submit required SIP revisions for the San Antonio, DFW, and HGB areas. The required Moderate area SIP elements that the TCEQ failed to submit include Nonattainment New Source Review (NNSR), Reasonable Further Progress (RFP), the attainment demonstration, RACM, RACT, contingency measures, and Basic I/M.[8]

III. Voluntary Reclassification of the San Antonio, DFW, and HGB Areas as Serious Ozone Nonattainment

On October 12, 2023, Texas Governor Greg Abbott submitted a request to the EPA Administrator to reclassify the San Antonio, DFW, and HGB ozone nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS.[9] A Serious classification is one category higher than the current classification of Moderate. If these areas are classified as Serious, the DFW and HGB areas must attain the 2015 ozone NAAQS no later than August 3, 2027, and the San Antonio area must attain the 2015 ozone NAAQS no later than September 24, 2027.

CAA section 181(b)(3) provides for ''voluntary reclassification'' and states that ''[t]he Administrator shall grant the request of any state to reclassify a nonattainment area in that State . . . to a higher classification. The Administrator shall publish a notice in the **Federal Register** of any such request and of action by the Administrator granting the request.'' The EPA herein is providing such notice of the request and is proposing to grant the request from Texas. The EPA reads the relevant statutory language to provide no discretion to deny the request made in this instance.

IV. Consequences of Reclassification

A. Permitting for Stationary Air Pollution Sources

Upon reclassification, stationary air pollution sources in the San Antonio, DFW, and HGB ozone nonattainment areas will be subject to Serious ozone nonattainment area New Source Review (NSR) and Title V permit requirements. The source applicability thresholds for major sources and major source modification emissions will be 50 tons per year (tpy) for volatile organic compounds (VOC) and nitrogen oxides (NO_X). For new and modified major stationary sources subject to review under Texas Administrative Code Title 30, Chapter 116, Section 116.150 (30 TAC 116.150) in the EPA approved SIP,[10] VOC and NO_X emission increases from the proposed construction of the

[2] 80 FR 65292 (October 26, 2015).

[3] For the 2015 ozone NAAQS, the DV at each monitoring site is the annual fourth-highest daily maximum 8-hour average ozone concentration, averaged over three consecutive years. For areas with more than one monitoring site, the highest DV among the monitoring sites is the DV for such areas.

[4] 83 FR 25776 (June 4, 2018). The DFW nonattainment area for the 2015 ozone NAAQS includes nine counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Tarrant, and Wise. The HGB nonattainment area for the 2015 ozone NAAQS includes six counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, and Montgomery.

[5] 83 FR 35136 (July 25, 2018). The San Antonio nonattainment area includes all of Bexar County and is referred to as the ''Bexar County nonattainment area'' in the reclassification request from the Governor of Texas, discussed in Section II of this proposal.

[6] 88 FR 71757, (October 18, 2023).

[7] If the EPA has not affirmatively determined that a state has made the required complete SIP submittal for an area within 18 months of the effective date of finding, then the offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area (CAA section 179(a) and (b) and 40 CFR 52.31). If the EPA has not affirmatively determined that a state has made the required complete SIP submittal within 6 months after the offset sanction is imposed, then the highway funding sanction will apply in the affected nonattainment area (CAA section 179(b)(1) and 40 CFR 52.31). The EPA must promulgate a FIP no later than 2 years after issuance of the FFTS if an affected state has not submitted, and the EPA has not approved, the required SIP submittal.

[8] See the FFTS for more detail—the FFTS is also posted in the docket for this action.

[9] The submitted request is posted in the docket for this action.

[10] Specifically, we are referring to the EPA-approved Texas SIP at Section 116.150, titled ''New Major Source or Major Modification in Ozone Nonattainment Area.'' 60 FR 49781 (September 27, 1995) and subsequent revisions at 77 FR 65119 (October 25, 2012).

new or modified major stationary sources must be offset by emission reductions by a minimum offset ratio of 1.20 to 1 (see CAA section 182(c)(10)). We note that the DFW and HGB areas are classified as Severe under the 2008 ozone NAAQS and thus, the more stringent Severe area requirements are currently being implemented in those areas.[11]

B. Status of Certain Requirements of Previous Classification

EPA interprets the ozone nonattainment requirements of the CAA to provide that when an ozone nonattainment area is reclassified, the attainment date for the prior classification is superseded by the attainment date for the new classification. Thus, once a nonattainment area has been reclassified and as a result has a new statutory attainment deadline, certain SIP elements (in this action, the attainment demonstration, RACM, and contingency measures for failure to attain) which are tied to the applicable attainment deadline are no longer required for the lower, superseded classification. Requiring a state to submit or EPA to act on such SIP elements would make no logical or practical sense. Generally, after EPA has determined that an area has failed to attain by its applicable attainment date, the area is reclassified. Consequently, that former, superseded classification's attainment date is in the past and is no longer applicable, and it is no longer meaningful to evaluate whether a plan demonstrates that an area would attain by that superseded date. At that point in time, no changes could be made to the attainment demonstration that would change facts that have already come to pass, *i.e.,* that the area has failed to attain by its applicable attainment date.[12] This reasoning also applies in the case of RACM, which for ozone is submitted with the attainment demonstration demonstrating that an area has adopted all RACM necessary to demonstrate attainment as expeditiously as practicable.[13] EPA has long evaluated RACM in terms of whether there are any reasonably available control measures that could advance an area's attainment date. In the situation discussed herein, the attainment date is in the past, so it is not possible to conduct an evaluation as to whether attainment could be advanced. Accordingly, EPA interprets the CAA such that following reclassification, any required attainment demonstration and associated RACM analysis must be done with respect to the new and current applicable attainment date.

The same logic applies for voluntary reclassifications. Section 181(b)(3) of the CAA clearly authorizes states to request reclassification for an ozone nonattainment area, as Texas did here. The effect of EPA's grant of such a request would be to reclassify the area and establish a new attainment date for the higher classification, which would replace the old attainment date associated with the area's former, superseded classification. A voluntary reclassification to a higher classification could occur before the lower classification's attainment date but would still establish a new attainment date. Thus, voluntary reclassification would still render inapplicable those requirements specifically tied to the lower classification's attainment date, which would no longer be applicable. The CAA does not require attainment demonstrations (and associated RACM analysis) for attainment dates associated with classifications that are not applicable to the area. Moreover, following voluntary reclassification from Moderate to Serious before the Moderate attainment date, the EPA is no longer required to determine whether the area attained by the no longer applicable Moderate attainment date. Because the EPA would not issue such a finding of failure to attain, contingency measures for failure to attain by the Moderate attainment date no longer have logical significance.[14] Therefore, the EPA proposes that if this reclassification takes effect, the following Moderate area SIP requirements would no longer be required: (1) an attainment demonstration with respect to the Moderate attainment date, (2) a RACM analysis with respect to the Moderate attainment date, and (3) contingency measures for failure to attain by the Moderate attainment date. Texas must submit these SIP elements for the Serious classification according to the deadlines established elsewhere in this proposal. Accordingly, the EPA is proposing to determine that the October 2023 findings that EPA published with respect to SIP revisions for these three identified elements for the Moderate classification are now moot, and that the associated deadlines triggered by the October 2023 findings for imposition of sanctions or promulgation of a FIP no longer apply with respect to these three identified elements.[15]

Note, however, that there remain several Moderate area SIP requirements that continue to be required after these areas are reclassified to Serious. They are unaffected because their meaning is not dependent upon the attainment date itself. These are: (1) a 15 percent rate-of-progress (ROP) plan (40 CFR 51.1310), (2) contingency measures for failure to achieve RFP, including the 15 percent rate-of-progress (ROP) requirement for Moderate areas (CAA sections 172(c)(9) and 182(c)(9)),[16] (3) a RACT demonstration (40 CFR 51.1312), (4) NNSR rules (40 CFR 51.165), and (5) a Basic I/M program (CAA section 182(b)(4) and 40 CFR 51 subpart S). Reclassification does not change the submission requirement or implementation deadlines for these SIP elements that were due for the Moderate classification for the San Antonio, DFW, and HGB areas. Changing the submission requirement or implementation deadlines for these elements would delay the implementation of these measures beyond what the CAA intended. While the CAA does provide for later attainment dates for higher classifications, it does not authorize altering requirements that came due as a result of the lower classifications aside from the very particular situation outlined for requirements that are directly dependent on the attainment date. For example, the CAA requirement in section 182(b)(2) to implement RACT for specified categories of sources is implemented and assessed based on whether the RACT rules are implementing what is economically and technologically feasible. In other words, this analysis of whether controls comprise RACT is done irrespective of the attainment deadline. There is nothing in the CAA to suggest that reclassification as Serious, and the associated change in an area's attainment date, should alter the preexisting requirement to submit a SIP

[11] For Severe ozone nonattainment areas, the nonattainment NSR source applicability thresholds for major sources and major source modification emissions are 25 tpy for VOC and NO_X, and the minimum emissions offset ratio is 1.30 to 1 (see CAA sections 182(d) and 182(d)(2)).

[12] See 42 U.S.C. 7511a(c)(2)(A). As required by the CAA, a state must submit ''[a] demonstration that the plan, as revised, will provide for attainment of the ozone [NAAQS] *by the applicable attainment date.*'' [emphasis added]

[13] See 40 CFR 51.1312(c). *See Sierra Club* v. *EPA,* No. 01–1070 (D.C. Cir. 2002) (holding that the ''RACM requirement is to be understood as a means of meeting the deadline for attainment'').

[14] Contingency measures for failure to meet RFP by the Moderate attainment date would continue to be required after voluntary reclassification from Moderate to Serious.

[15] 88 FR 71757.

[16] If a state demonstrates that ROP has been met for an area, the EPA believes that the requirement for contingency measures for that purpose could similarly be mooted.

implementing RACT level controls and the deadline to implement those controls.[17] This same logic applies to all the identified requirements not specifically tied to the attainment date, and the associated deadlines for imposition of sanctions and EPA's obligation to promulgate a FIP triggered by the October 2023 findings would continue to apply with respect to these elements.

C. Required Plans, and Submission and Implementation Deadlines

1. Serious Area Plan Requirements

The SIP requirements that apply specifically to Serious areas are listed under CAA section 182(c) and include: Enhanced monitoring (CAA section 182(c)(1); Emissions inventory and emissions statement rule (40 CFR 51.1300(p) and 40 CFR 51.1315); RFP (40 CFR 51.1310); Attainment demonstration and RACM (40 CFR 51.1308 and 40 CFR 51.1312(c)); RACT (40 CFR 51.1312); Nonattainment NSR (40 CFR 51.1314 and 40 CFR 51.165); Enhanced I/M (CAA section 182(c)(3) and 40 CFR 51 Subpart S); Clean-fuel vehicle programs (CAA section 182(c)(4);[18] and Contingency measures (CAA sections 172(c)(9) and 182(c)(9)). In addition, a demonstration evaluating the need for a transportation control measure program (CAA section 182(c)(5)) is also required. Note that the analysis addressing RACT level controls for major sources should include an evaluation of controls for sources emitting 50 tpy or more that are currently reasonably available, consistent with the definition of ''major source'' or ''major stationary source'' for areas classified as Serious.[19] The RACT analysis should also include an evaluation of any newly-identified VOC sources covered by an EPA Control Techniques Guideline, and an evaluation of controls for VOC and NO_X sources emitting 100 tpy or more that may have become reasonably available since the January 1, 2023, Moderate area deadline for adopting and implementing RACT.

Consistent with the I/M regulations, for the existing I/M programs in the DFW and HGB areas, the State would need to conduct and submit a performance standard[20] modeling (PSM) analysis[21] as well as make any necessary program revisions as part of the Serious area I/M SIP submissions to ensure that I/M programs are operating at or above the Enhanced I/M performance standard level for the 2015 ozone NAAQS.[22] The State may determine through the PSM analysis that an existing SIP-approved program would meet the Enhanced performance standard for purposes of the 2015 ozone NAAQS without modification. In this case, the State could submit an I/M SIP revision with the associated performance modeling and a written statement certifying their determination in lieu of submitting new revised regulations.[23] With the passage of time and changes in fleet mix, it is appropriate for the State to confirm existing programs' compliance with the performance standard.

The State included PSM for the existing (Enhanced) I/M program in Appendix C of the SIP revisions, proposed by the State on May 31, 2023, for the DFW and HGB attainment demonstrations, and included PSM as an attachment to the I/M SIP revision, proposed by the State on May 31, 2023, for the San Antonio nonattainment area, to demonstrate that PSM is met for Basic I/M in that area.[24] The EPA will address these SIP revisions in a separate future action after the State has finalized these proposed SIP revisions and submitted them to the EPA for consideration. However, following reclassification as Serious, as outlined above for existing I/M programs, the State will need to make any necessary revisions to the proposed San Antonio Basic I/M program and submit a PSM analysis along with a written certification as part of the Serious area SIP submissions to demonstrate that the San Antonio area I/M program will be operating at or above the Enhanced I/M performance standard level for the 2015 ozone NAAQS when the Enhanced I/M program is implemented. The Enhanced I/M program requirements are to be fully implemented as expeditiously as practicable but no later than the implementation deadline determined by the final action reclassifying these areas as discussed in Section III.C.4. of this proposal.

In addition, CAA section 182(c)(5) requires that ozone nonattainment areas classified as Serious submit a demonstration of whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for an area's demonstration of attainment. If the demonstration shows that these transportation parameters will result in an exceedance of the projected emissions in the attainment demonstration, the State would be required to develop and submit a SIP revision within 18 months that includes transportation control measures to reduce emissions to levels consistent with the attainment demonstration.

2. Submission Deadline for the San Antonio, DFW, and HGB Serious Area SIPs for the 2015 Ozone NAAQS

The SIP submission deadlines for nonattainment areas initially classified as Serious for the 2015 ozone NAAQS have passed and thus, the EPA is proposing new SIP submission deadlines for the reclassified Texas areas.[25] In proposing these new deadlines, EPA is considering the statutory guidance provided in CAA section 182(i), which allows the Administrator to adjust applicable deadlines other than attainment dates for areas that are reclassified as a result

[17] EPA notes that reclassification does obligate the state to conduct an additional RACT analysis for the new classification. This does not relieve the obligation for the prior classification. A state may be able to consider the results of its overdue Moderate RACT analysis in preparing its Serious area RACT submittal.

[18] In June 2022, the EPA released new guidance that provides several options for states to either continue to rely upon their existing Clean Fuel Fleets Program, to add new components to these programs, or to rely on recent EPA regulations to satisfy the Clean Fuel Fleets requirement. This new guidance reaffirms and supplements the 1998 guidance with new compliance options. This guidance is posted at *https://www.epa.gov/state-and-local-transportation/clean-fuel-fleets-program-guidance.*

[19] See CAA section 182(c).

[20] An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC, and NO_X.

[21] See *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* (October 2022, EPA–420–B–22–034) at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1015S5C.pdf.*

[22] 40 CFR 51.372(a)(2).

[23] See *Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements,* 83 FR 62998, 63001– 63002 (December 6, 2018). Performance standard modeling is also required for Enhanced I/M programs in Serious and above ozone nonattainment areas for the 2015 ozone NAAQS.

[24] The DFW proposed SIP revision is identified as Project No. 2022–021–SIP–NR, the HGB proposed SIP revision is identified as Project No. 2022–022–SIP–NR, and the proposed I/M SIP revision for the San Antonio nonattainment area is identified as 2022–027–SIP–NR The Texas proposed SIP revisions are posted at *https://www.tceq.texas.gov/airquality/sip/Hottop.html.*

[25] CAA section 182(i) specifically provides authority to EPA to adjust applicable deadlines, other than attainment dates, for areas that are reclassified as a result of failure to attain under CAA section 182(b)(2), to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions. The provision does not specifically reference areas that are voluntarily reclassified under CAA section 181(b)(3); EPA is therefore reasonably proposing to adjust deadlines for such areas under its general rulemaking authority in CAA section 301(a), consistent with CAA section 182(i).

of failure to attain, ''to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' EPA's proposed deadlines are also informed by the amount of time and balance of considerations, including an area's attainment date, that the CAA prescribes when new implementation plans are required to be submitted. *See, e.g.,* CAA section 110(k)(5) (allowing EPA to ''establish reasonable deadlines (not to exceed 18 months)'' after notification that a SIP is inadequate); CAA section 179(d) (requiring states to submit a new SIP revision demonstrating attainment within one year of a finding that a nonattainment area has failed to attain by its attainment date). EPA also considered the time necessary for the State to adopt revisions to necessary attainment strategies, address other SIP requirements, and complete the public notice process necessary to adopt and submit timely SIP revisions. Given the Serious area attainment year of 2026 and the Serious area attainment dates in 2027, we are proposing and taking comment on a range of SIP submission deadlines from 12 to 18 months from the effective date of the EPA's final action reclassifying the San Antonio, DFW, and HGB areas as Serious. Twelve months is consistent with submission deadlines set forth in prior mandatory reclassifications for the DFW area, *i.e.,* 12 months from the effective date of reclassification.[26] This shorter deadline would also provide for additional time for adopted control measures to influence an area's air quality and 2024–2026 attainment DV and aid in these areas' ability to attain by the Serious attainment deadline. Given the anticipated timing of these area reclassifications, an 18-month SIP submission deadline could also be reasonable, falling before the beginning of the Serious area attainment year (January 1, 2026) and increasing the State's available time for assessing, adopting, and implementing emission reduction measures such that these areas can meet the ozone NAAQS expeditiously. Therefore, we are proposing and taking comment on a range of deadlines, from 12 to 18 months from the effective date of reclassification, for submission of the revised SIPs for the San Antonio, DFW, and HGB Serious nonattainment areas. We request that comments on the deadline for submission of the revised SIPs be accompanied by justification for the commenter's position. We will review comments received during the comment period and determine the appropriate SIP submission deadline in our final action for these Serious area submission requirements.

3. Implementation Deadline for RACT

With respect to implementation deadlines, the EPA's implementing regulations for the 2015 ozone NAAQS require that, for RACT required pursuant to reclassification, the state shall provide for implementation of such RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP revision submittal deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification (see 40 CFR 51.1312(a)(3)(ii)). The modeling and attainment demonstration requirements for 2015 ozone NAAQS areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per 40 CFR 51.1312 (see 40 CFR 51.1308(d)).

In the case of the potential reclassified Serious areas addressed in this proposal, the start of the ozone season varies among the areas—January for the HGB area and March for the DFW and San Antonio areas (see 40 CFR part 58, appendix D, section 4.1, Table D–3).[27] Per 40 CFR 51.1312(a)(3)(ii), and consistent with CAA section 182(i)'s provision that EPA may adjust deadlines for mandatorily reclassified areas as necessary and appropriate ''to assure consistency among the required submissions'' the EPA is proposing a consistent single RACT implementation deadline for all the areas addressed in this proposal, that RACT be implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.,* January 1, 2026. This proposed deadline would require implementation of RACT as early as possible in the attainment year to influence an area's air quality and 2024–2026 attainment DV.

The EPA requests comment on its proposed deadline that RACT be implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.,* January 1, 2026.

4. Implementation Deadline for Enhanced I/M Programs

With respect to the implementation deadline for Enhanced I/M programs, if the State intends to rely upon emission reductions from its newly required Enhanced I/M programs for the 2015 ozone NAAQS, the State would need to have such Enhanced programs fully implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.,* January 1, 2026. However, given the unique nature of I/M programs, there are many challenges, tasks, and milestones that must be met in establishing and implementing an Enhanced I/M program. The EPA realizes that implementing a new or revised I/M program on an accelerated timeline may be difficult to achieve in practice so, if the State does not intend to rely upon emission reductions from its Enhanced I/M programs in SIPs demonstrating attainment or RFP, we are proposing to allow any new or revised Enhanced I/M programs to be fully implemented no later than 4 years after the effective date of reclassification, explained as follows.

Under CAA section 182(i), reclassified areas are generally required to meet the requirements associated with their new classification ''according to the schedules prescribed in connection with such requirements.'' The I/M regulations provide such a prescribed schedule in stating that newly required I/M programs are to be implemented as expeditiously as practicable. The I/M regulations also allow areas newly required to implement Enhanced I/M up to ''4 years after the effective date of designation and classification'' to fully implement the I/M program.[28] With the effective date of this action expected to be in 2024, the implementation deadline for Enhanced I/M programs for the 2015 ozone NAAQS under the proposal would be in 2028. This proposed implementation deadline is beyond the Serious area attainment date of August

[26] See reclassification final actions for the DFW area at 75 FR 79302 (December 20, 2010) and 63 FR 8128 (February 18, 1998).

[27] Air Quality Control Region (AQCR) 215 includes the DFW area, AQCR 216 includes the HGB area, and AQCR 217 includes the San Antonio area. See also 62 FR 30270 (June 3, 1997) and 40 CFR subpart B.

[28] The I/M program implementation deadline at 40 CFR 51.373(d) states: ''For areas newly required to implement Enhanced I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.'' A start date for I/M programs of 4 years after the effective date of designation and classification under the 8-hour ozone standard is also cited in the Enhanced I/M performance standard at 40 CFR 51.351(c) and (i)(2).

3, 2027 (or September 24, 2027, for the San Antonio area). However, by proposing such a deadline for newly reclassified Serious areas required to implement an Enhanced I/M program (but not needing I/M emission reductions for attainment or RFP SIP purposes), the EPA maintains that these newly required Enhanced I/M programs could reasonably be implemented after the attainment year ozone season (*i.e.,* after 2026) relevant to the Serious area attainment date if reductions from these Enhanced I/M programs are not necessary for an area to achieve timely attainment of the 2015 ozone NAAQS. The EPA has long taken the position that the statutory requirement for states to implement I/M in ozone nonattainment areas classified Moderate and higher generally exists independently from the attainment planning requirements for such areas.[29] Considering the numerous challenges and milestones necessary in implementing an Enhanced I/M program, this proposed implementation deadline of up to 4 years is reasonable.

This proposed implementation deadline for Enhanced I/M implementation does not extend the deadline for implementation of the San Antonio area's Basic I/M program (November 7, 2026), which is still required from the area's prior classification as Moderate.[30]

The EPA requests comment on requiring that any new or revised Enhanced I/M programs be fully implemented as expeditiously as practicable but no later than four years after the effective date of reclassification. If the State intends to rely upon emission reductions from its newly required Enhanced I/M programs for the 2015 ozone NAAQS, the State would need to have such Enhanced programs fully implemented as expeditiously as practicable but no later than the beginning of the applicable attainment year, *i.e.,* January 1, 2026.

5. Reporting Deadline for the Transportation Control Demonstration

In Serious ozone nonattainment areas, CAA section 182(c)(5) requires the state to submit, six years after November 15, 1990, and every three years thereafter, a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Six years after November 15, 1990, was two years after the statutory deadline established to submit attainment demonstrations. To be consistent with this CAA schedule, we are proposing that the first transportation control demonstration be required to be submitted two years after the attainment demonstrations for these areas are due, and every three years thereafter.

V. Proposed Action

Pursuant to CAA section 181(b)(3), we are proposing to grant the Texas Governor's request to reclassify the San Antonio, DFW, and HGB nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS. The EPA is also proposing to set a deadline for the submission of revised SIPs addressing the Serious area requirements for the San Antonio, DFW, and HGB ozone nonattainment areas. We are proposing to establish a deadline within the range of 12 to 18 months from the effective date of the final action reclassifying the San Antonio, DFW, and HGB areas as Serious for the TCEQ to submit SIP revisions addressing the CAA Serious ozone nonattainment area requirements. We are also proposing a deadline for implementation of new RACT controls as expeditiously as practicable but no later than January 1, 2026. Also, if the State does not intend to rely upon emission reductions from its Enhanced I/M programs in SIPs demonstrating attainment or RFP, we are proposing a deadline for any new or revised Enhanced I/M programs to be fully implemented as expeditiously as practicable but no later than four years after the effective date of the final action reclassifying these areas as Serious for the 2015 ozone NAAQS. We are also proposing a deadline for the first transportation control demonstration, as required by CAA section 182(c)(5), to be submitted two years after the attainment demonstration due date, and every three years thereafter.

VI. Environmental Justice Considerations

For this proposed action, the EPA conducted screening analyses using the EPA's Environmental Justice (EJ) screening tool (EJScreen tool, version 2.2).[31] The EPA reviewed environmental and demographic data of the populations living within the San Antonio, DFW, and HGB areas. The EPA then compared these data to the national average for each of the environmental and demographic groups. The results of this analysis are being provided for informational and transparency purposes.

Review of the environmental analyses indicate that Collin, Dallas, Denton, and Tarrant counties in the DFW area and all six counties in the HGB area are above the 80th percentile for ozone. Review of the demographic analyses indicate that Chambers, Galveston, and Harris counties in the HGB area are above the 80th percentile for limited English-speaking households. A detailed description of the EJ considerations and the EJScreen analysis reports are available in the docket for this rulemaking.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14094: Modernizing Regulatory Review

This proposed action is not a significant regulatory action as defined in Executive Order 12866, as amended by Executive Order 14094, and was therefore not subject to a requirement for Executive Order 12866 review. Because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, the timing of the submittal of the Serious area requirements does not impose a materially adverse impact under Executive Order 12866.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the provisions of the PRA.

C. Regulatory Flexibility Act (RFA)

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action will not impose any requirements on small entities, because the EPA is seeking comment only on the timing of submittal requirements.

D. Unfunded Mandates Reform Act of 1995 (UMRA)

This proposed action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed action imposes no new enforceable duty on any State, local or Tribal governments or the private sector.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have

[29] *See* John S. Seitz, Memo, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' May 10, 1995, at 4.

[30] See 87 FR 60897, October 7, 2022, at 60900.

[31] See *https://www.epa.gov/ejscreen.*

substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This proposed action does not have Tribal implications as specified in Executive Order 13175. There are no Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the San Antonio, DFW, or HGB ozone nonattainment areas. Therefore, this proposed action 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.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This proposed action is not subject to Executive Order 13045 because the EPA is seeking comment only on the timing of submittal requirements and as such, does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This proposed action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This proposed action does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

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.''

This proposed action would reclassify the San Antonio, DFW, and HGB nonattainment areas from Moderate to Serious for the 2015 ozone NAAQS, set deadlines for the submission of revised SIPs addressing the Serious area requirements for these three ozone nonattainment areas, and set deadlines for implementation of controls required for these three nonattainment areas. This proposal does not revise measures in the current SIP. As such, at a minimum, this action would not worsen any existing air quality and is expected to ensure the areas are meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating this action is expected to have disproportionately high or adverse human health or environmental effects on a particular group of people. The EPA performed an environmental justice analysis, as described earlier in this action under ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this proposal to the public, not as a basis of the action.

K. Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the D.C. Circuit: (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion to decide whether to invoke the exception in (ii).

This proposal, if finalized, would be locally applicable because it would apply only to three nonattainment areas located in the State of Texas. However, if the Administrator finalizes this proposed rulemaking, the Administrator intends to exercise the complete discretion afforded to him under the CAA to make and publish a finding that the final action is based on a determination of ''nationwide scope or effect'' within the meaning of CAA section 307(b)(1). This proposed action, if finalized, would be based on EPA's determination as a matter of law that upon reclassification of a nonattainment areas for the 2015 ozone NAAQS, certain nonattainment area planning requirements that are tied to the lower, superseded classification's attainment date for these NAAQS (*i.e.,* for this action, the Moderate area attainment demonstration, Moderate area RACM demonstration, and contingency measures for failure to attain) are no longer required. This is a determination of nationwide scope or effect because it reflects EPA's nationwide approach to implementing the CAA's mandates concerning the consequences, in all states, of reclassification from Moderate to Serious under subpart 2 of title I, part D of the CAA. For these reasons, the Administrator intends, if this proposed action is finalized, to exercise the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1).

List of Subjects in 40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

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

Dated: January 19, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–01525 Filed 1–25–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 23–388; FCC 23–108; FR ID 195641]

Achieving 100% Wireless Handset Model Hearing Aid Compatibility

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (''Commission'') tentatively concludes that requiring 100% of all handset models to be certified as hearing aid-compatible is an achievable object and seeks comment on revising the definition of hearing aid compatibility to include Bluetooth connectivity technology. In addition, the Commission seeks comment on a number of implementation proposals related to this tentative conclusion.

DATES: Interested parties may file comments on or before February 26, 2024, and reply comments on or before March 11, 2024. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, the Office of Management and Budget (OMB), and other interested parties on or before March 26, 2024. Written comments on the Initial Regulatory Flexibility Analysis (IRFA) in this document must have a separate and distinct heading designating them as responses to the IRFA and must be submitted by the public on or before February 26, 2024.

ADDRESSES: You may submit comments, identified by WT Docket No. 23–388, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing,* Public Notice, 35 FCC Rcd 2788 (2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), please send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

FOR FURTHER INFORMATION CONTACT: For further information on this proceeding, contact Eli Johnson, *Eli.Johnson@fcc.gov,* of the Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–1395. For additional information concerning the Paperwork Reduction Act proposed information requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), in WT Docket No. 23–388; FCC 23–108, adopted December 13, 2023, and released on December 14, 2023. The full text of the document is available for download at *https://docs.fcc.gov/public/attachments/FCC-23-108A1.pdf.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, 45 L Street NE, Room 1.150, Washington, DC 20554, (202) 418–0270.

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 an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule and policy changes contained in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. Comments must be by the deadlines for comments on this Notice of Proposed Rulemaking indicated in the **DATES** section of this document and must have a separate and distinct heading designating them as responses to the IRFA and must be filed in WT Docket No. 23–388.

Paperwork Reduction Act: This document contains proposed modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the general public and the Office of Management and Budget to comment on the information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Ex Parte Rules: This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex*

parte presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Providing Accountability Through Transparency Act: The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of this Notice of Proposed Rulemaking is available at *https://www.fcc.gov/proposed-rulemakings.*

Synopsis

I. Introduction

1. The Commission has a longstanding commitment to ensuring that all Americans, including those with disabilities, are able to access communications services on an equal basis. The recent pandemic highlighted just how important equal access to communications services is for individual well-being as well as the day-to-day functioning of American society. The Commission's commitment to ensuring accessibility for all Americans includes ensuring those with hearing loss—more than 37.5 million Americans—have equal access to communications services as required by section 710 of the Communications Act. This section directs the Commission to facilitate compatibility between wireless handset models and hearing aids. In fulfilling this statutory directive, the Commission is committed to ensuring that its wireless hearing aid compatibility provisions keep pace both with the ways handset models couple with hearing devices and requiring all handset models to be hearing aid compatible. It is with these objectives in mind that the Commission initiates today's rulemaking.

2. Specifically, the Commission issues this Notice of Proposed Rulemaking to develop a record with respect to a proposal submitted to the Commission by the Hearing Aid Compatibility (HAC) Task Force on how the Commission can achieve its long held goal of a 100% hearing aid compatibility benchmark for all handset models offered in the United States or imported for use in the United States. The HAC Task Force is an independent organization composed of groups who represent the interests of people with hearing loss, wireless service providers, and wireless handset manufacturers that was formed for the purpose of reporting to the Commission on whether requiring 100% of all handset models to be certified as hearing aid compatible is an achievable objective. The Task Force's Final Report represents a consensus proposal for how the Commission can achieve this objective. The Commission proposes to adopt the Task Force's proposal with certain modifications in order to ensure that all handset models provide full accessibility for those with hearing loss while at the same time ensuring that its rules do not discourage or impair the development of improved technology.

3. Specifically, the Commission tentatively concludes that requiring 100% of all handset models to be certified as hearing aid compatible is an achievable objective under the factors set forth in section 710(e) of the Communications Act. As part of this determination, the Commission seeks comment on adopting the more flexible ''forward-looking'' definition of hearing aid compatibility that the HAC Task Force recommends. This determination also includes a proposal to broaden the current definition of hearing aid compatibility to include Bluetooth connectivity technology and to require at least 15% of offered handset models to connect to hearing aids through Bluetooth technology as an alternative to or in addition to a telecoil. The Commission seeks comment on the Bluetooth technology that it should utilize to meet this requirement and how it should incorporate this requirement into its wireless hearing aid compatibility rules.

4. Further, the Commission explores ways to reach the 100% compatibility benchmark, and it proposes a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to a 100% hearing aid-compatible handset standard for all handset models offered for sale in the United States or imported for use in the United States. The Commission seeks comment on certain implementation proposals and updates to the wireless hearing aid compatibility rules related to these proposals. These proposals include requirements for hearing aid compatibility settings in handset models, revised website posting, labeling and disclosure rules, and revised reporting requirements along with seeking comment on renaming its § 20.19 rules to better reflect what this section covers.

5. The Commission's proposals are based on the results of collaborative efforts of members of the HAC Task Force who worked together over a period of years to reach a consensus proposal on how best to ensure that all new handset models meet the needs of those with hearing loss. The revisions that the Commission proposes today to its wireless hearing aid compatibility rules would ensure greater access to wireless communication services for Americans with hearing loss and the ability of these consumers to consider the latest and most innovative handset models for their needs.

II. Background

6. Over time, the Commission has progressively increased the deployment benchmarks for hearing aid-compatible wireless handset models. In 2016, the Commission reconfirmed its commitment to pursuing 100% hearing aid compatibility to the extent achievable. The *2016 HAC Order* supported this objective by increasing the number of hearing aid-compatible handset models that handset manufacturers and service providers were required to offer by adopting two new handset model deployment benchmarks. After a two-year transition for handset manufacturers, and with additional compliance time for service providers, the then-applicable handset model deployment benchmarks were increased to 66%. After a five-year transition period for handset manufacturers, and with additional compliance time for service providers, the 66% handset model deployment benchmarks were increased to 85%.

7. In this same order, the Commission established a process for determining whether a 100% hearing aid compatibility requirement is ''achievable.'' The Commission stated that it wanted to continue the ''productive collaboration between stakeholders and other interested parties'' that had been part of the process for enacting the two new handset model deployment benchmarks. The Commission noted the stakeholders' proposal to form a task force independent of the Commission to ''issue a report to the Commission helping to inform'' the agency ''on whether 100 percent hearing aid compatibility is achievable.'' Part of this process included determining whether the hearing aid compatibility requirements should be modified to

include alternative technologies such as Bluetooth. The Commission stated that it was deferring action on compliance processes, legacy models, burden reduction, the appropriate transition periods, and other implementation issues until after it received the HAC Task Force's Final Report on achievability. The Commission specified that it intended to decide by 2024 whether to require 100% of covered wireless handset models to be hearing aid compatible. The Commission indicated that it would make its determination as to whether this goal is achievable by relying on the factors identified in section 710(e) of the Communications Act. After the *2016 HAC Order* was released, sstakeholders convened the independent Task Force and filed progress updates with the Commission.

8. In 2018, the Commission imposed new website posting requirements and took steps to reduce regulatory burden on service providers by allowing them to file a streamlined annual certification under penalty of perjury stating their compliance with the Commission's hearing aid compatibility requirements. As part of the *2018 HAC Order,* the Commission noted that, in the 100% hearing aid compatibility docket, it was considering broader changes to the hearing aid compatibility rules that may be appropriate in the event it required 100% of covered handset models to be hearing aid compatible. The Commission indicated that the website, record retention, and certification requirements it was adopting as part of the *2018 HAC Order* would remain in place unless and until the Commission took further action in the 100% hearing aid compatibility docket and that its decisions did not ''prejudge any further steps we may take to modify our reporting rules in that proceeding.''

9. In February 2021, the Commission adopted the 2019 ANSI Standard for determining hearing aid compatibility. The 2019 ANSI Standard was to replace the existing 2011 ANSI Standard after a two-year transition period that was set to end on June 5, 2023. Like the 2011 ANSI Standard, the 2019 ANSI Standard addresses acoustic and inductive coupling between wireless handset models and hearing aids but uses heightened testing methodologies intended to ensure handset models offer a better listening experience for consumers. In addition, the 2019 ANSI Standard includes for the first time a volume control requirement. The standard specifically references the TIA 5050 Standard that addresses volume control requirements for wireless handset models. As part of the order adopting the 2019 ANSI Standard and the related TIA 5050 Standard, the Commission reiterated its goal ''to continue on the path to making 100% of wireless handsets hearing aid compatible.''

10. In December 2022, the HAC Task Force filed its Final Report with the Commission, which makes five central recommendations. The report recommends that the Commission: (1) adopt a more flexible, forward-looking definition of hearing aid compatibility; (2) adjust current technical standards; (3) allow for exploration of changes in coupling technology (*e.g.,* by additional exploration of Bluetooth and alternative technologies); (4) allow reliance on information linked in the Commission's Accessibility Clearinghouse; and (5) set a 90-day shot clock for the resolution of petitions for waiver of the hearing aid compatibility requirements.

11. The Final Report also recommends that the Commission grant the volume control waiver request that the Alliance for Telecommunications Industry Solutions (ATIS) filed the same day that the HAC Task Force filed its Final Report. In its waiver request, ATIS asserted that the testing performed by the Task Force revealed that the TIA 5050 Standard for volume control was fundamentally flawed because it required the use of a pulsed-noise signal, which ATIS claimed was insufficiently voice-like to be compatible with many modern codecs. ATIS also stated that the standard's use of a pulsed-noise signal resulted in none of the handsets that it tested passing the standard. As a result, ATIS requested that the Commission allow handsets to be certified as hearing aid compatible using a modified volume control testing methodology.

12. On March 23, 2023, the Wireless Telecommunications Bureau (WTB) released a Public Notice seeking comment on the HAC Task Force's Final Report. The Public Notice sought comment generally on the report's recommendations and whether they furthered the Commission's goal of attaining 100% hearing aid compatibility. The Public Notice also asked whether the report's recommendations were consistent with the policy goals the Commission has historically outlined in its hearing aid compatibility-related proceedings and with the Commission's statutory duties under section 710 of the Communications Act of 1934, as amended. The Commission received three comments and three replies in response to the Public Notice.

13. On April 14, 2023, WTB released an order extending the transition period for exclusive use of the 2019 ANSI Standard from June 5, 2023 to December 5, 2023. WTB took this step to ensure that handset manufacturers could continue to certify new handset models with hearing aid compatibility features under the 2011 ANSI Standard while the Commission considered ATIS's waiver petition. WTB stated that continuing to allow new handset models to be certified as hearing aid compatible is essential as the Commission moves to its goal of all handset models being hearing aid compatible.

14. On September 29, 2023, WTB conditionally granted in part ATIS's request for a limited waiver of the 2019 ANSI Standard's volume control testing requirements. Under the terms of the waiver, a handset model may be certified as hearing aid compatible under the 2019 ANSI Standard if it meets the volume control testing requirements described in the order as well as all other aspects of the 2019 ANSI Standard. This waiver will remain in place for two years to allow time for the development of a new, full volume control standard and for its incorporation into the wireless hearing aid compatibility rules.

III. Discussion

15. Below, the Commission tentatively concludes that a 100% hearing aid compatibility requirement for wireless handset models offered in the United States or imported for use in the United States is an achievable goal. The Commission seeks comment on ways to achieve this goal, including seeking comment on a more flexible, forward-looking definition of hearing aid compatibility, as recommended by the HAC Task Force. In addition, consistent with the HAC Task Force's recommendation, the Commission proposes to broaden the definition of hearing aid compatibility to include Bluetooth connectivity technology. The Commission proposes to implement this revised definition by requiring at least 15% of offered handset models to connect to hearing aids through Bluetooth technology as an alternative to or in addition to a telecoil. The Commission also seeks comment on the Bluetooth technology that it should utilize to meet this requirement and how it should adopt this requirement into its wireless hearing aid compatibility rules. The Commission furthers explore ways to reach the 100% compatibility benchmark as well as the appropriate transition period for reaching that benchmark. In addition, the Commission seeks comment on implementation of these proposals and

updates to the wireless hearing aid compatibility rules, including proposed requirements for hearing aid compatibility settings in handset models, updates to website posting, labeling and disclosure, and revised reporting requirements. Finally, the Commission seeks comment on renaming its hearing aid compatibility rules to reflect more accurately what those rules cover.

A. Achievability of 100% Hearing Aid Compatibility Under the Section 710(e) Factors

16. In the *2016 HAC Order,* the Commission stated that by 2024, it would make a determination of whether 100% hearing aid compatibility is achievable based on the factors identified in section 710(e) of the Communications Act. The Commission noted that commenters recommend that the Commission use a section 710 analysis (as opposed to the achievability requirements of sections 716 and 718) to determine whether a 100% standard is achievable. The Commission found that this approach was consistent with the analysis it undertook previously when adopting modifications to the then-current deployment benchmarks. The HAC Task Force's Final Report did not directly address achievability under the section 710(e) factors, and the Commission did not receive comments addressing these factors in response to WTB's Public Notice seeking comment on the HAC Task Force's Final Report.

17. The Commission tentatively concludes that requiring 100% of all handset models to be certified as hearing aid compatible is an achievable objective under the factors in section 710(e) of the Communications Act. Section 710(e) requires the Commission, in establishing regulations to help ensure access to telecommunications services by those with hearing loss, to ''consider costs and benefits to all telephone users, including persons with and without hearing loss,'' and to ''ensure that regulations adopted to implement [the Hearing Aid Compatibility Act] encourage the use of currently available technology and do not discourage or impair the development of improved technology.'' It further directs the Commission to use appropriate timetables and benchmarks to the extent necessary due to technical feasibility or to ensure marketability or availability of new technologies to users.

18. The Commission tentatively concludes that the benefits to all handset users of adopting a 100% compliance standard for handset models offered in the United States or imported for use in the United States would exceed the costs. The Commission anticipates that adopting a 100% compliance standard would provide significant benefits to those with hearing loss by ensuring that a greater share of handset models for purchase are hearing aid compatible. At the same time, the Commission does not expect that adopting the 100% standard would impose undue burdens on manufacturers or service providers, as the vast majority of new handset models are already hearing aid compatible today.

19. The HAC Task Force's Final Report found that, as of August 2022, about 93% of wireless handset models offered by manufacturers were already hearing aid compatible, which exceeds the benchmarks in the Commission's current rules. The Commission does not anticipate large costs for those with or without hearing loss if non-compliant models are discontinued, considering the overwhelming share of wireless handset models are already hearing aid compatible. Given the existing availability of hearing aid-compatible handset models, the Commission seeks comment on its tentative conclusion and on any specific burden or cost that a 100% compliance standard would impose on manufacturers and service providers. The Commission also seeks comment on the extent to which a 100% compliance standard would reduce the affordability of lowest-cost handset models and adversely affect low-income persons.

20. In addition, the Commission tentatively concludes that adopting a 100% compliance standard would encourage the use of currently available technology and would not discourage or impair the development of improved technology. Handset manufacturers, service providers, and consumer organizations that compose the HAC Task Force all unanimously support the Task Force's consensus proposal for achieving 100% compliance, and the Task Force's Final Report provides no indication or evidence that adopting the new standard would discourage the use of currently available technology or the development of improved technology. To the contrary, the Task Force's Final Report suggests that revising the wireless hearing aid compatibility rules to permit the use of Bluetooth as a coupling method would better align the Commission's requirements with current consumer preferences, as Bluetooth has become an increasingly popular method for pairing hearing aid devices to wireless handsets. The Commission seeks comment on this tentative conclusion.

21. Further, with respect to its tentative conclusion regarding the impact of a 100% requirement on technology, the Commission specifically seeks comment on whether allowing Bluetooth coupling as a way to achieve hearing aid compatibility or as an alternative or replacement for telecoil coupling would satisfy relevant statutory criteria. To permit the use of Bluetooth coupling as an alternative or as a replacement for telecoil coupling, is it sufficient for the Commission to find that Bluetooth coupling meets the achievability factors of section 710(e)? If so, commenters should explain how Bluetooth coupling meets the requirements of section 710(e) or why this method does not meet these statutory requirements. Are there other statutory requirements that Bluetooth coupling must meet in order for the Commission to allow its use as an alternative or replacement for telecoil coupling? If so, commenters should explain why Bluetooth coupling meets or does not meet these other statutory requirements.

22. Finally, the Commission tentatively concludes that adopting a 100% compliance standard after a reasonable transition period meets the requirements of section 710(e) that the Commission ''use appropriate timetables or benchmarks to the extent necessary (1) due to technical feasibility, or (2) to ensure the marketability or availability of new technologies to users.'' The transition periods that the Commission proposes below will expand access to hearing aid-compatible handset models while giving manufacturers and service providers sufficient notice and lead time to build hearing aid compatibilities into all future handset models rather than just a percentage of handset models. The Commission seeks comment on this tentative conclusion. Do commenters agree with the Commission's analysis and on the costs and benefits of its proposed finding? Given the current number of handset manufacturers who already include hearing aid compatibility in all of their handset models, would the Commission's finding adversely impact the ability of handset manufacturers to innovate and create new products? If so, how would shifting to a 100% requirement curtail innovation? Similarly, would requiring hearing aid compatibility in all handset models impose an undue burden on those handset manufacturers who currently do not meet this mark, or otherwise create disruptions in the competitive marketplace?

B. Definition of Wireless Hearing Aid Compatibility

23. As a threshold question for implementing a 100% hearing aid compatibility requirement, the Commission seeks comment on the appropriate definition of hearing aid compatibility for wireless handsets. Specifically, the Commission seeks comment on expanding the definition of hearing aid compatibility to reflect changing coupling technologies. First, the Commission seeks comment on adopting the HAC Task Force's recommended ''flexible'' hearing aid compatibility definition. Next, the Commission proposes to expand the definition to include Bluetooth connectivity and to require a certain percentage of offered handset models to include Bluetooth connectivity technology. As part of that proposal, the Commission seeks comment on which Bluetooth technologies it should recognize and how it should adopt these technologies into its rules.

1. HAC Task Force Recommended Hearing Aid Compatibility Definition

24. *Background.* The Commission's existing wireless hearing aid compatibility rules do not contain an express definition of hearing aid compatibility in the definitional section. Rather, the Commission's rules provide that a handset model is considered to be hearing aid compatible if it has been certified as such under a Commission-approved technical standard that the Commission has incorporated by reference into the rules through notice and comment rulemaking procedures. As of December 5, 2023, a new handset model can be certified as hearing aid compatible only if it meets the acoustic and inductive coupling requirements of the 2019 ANSI Standard and applicable volume control requirements.

25. The HAC Task Force recommends that the Commission define hearing aid compatibility in a more flexible manner than whether a handset model merely meets the criteria of a technical certification standard that the Commission has incorporated by reference into its rules. Specifically, the Task Force ''encourages the Commission to adopt a forward-looking, flexible definition'' of hearing aid compatibility ''that reflects changing technologies while abiding by Congress's direction in the statute.'' Specifically, the Task Force recommends that a hearing aid-compatible handset model be defined as a handset model that: (1) has an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable.

26. In the Public Notice, WTB sought comment on whether the Task Force's proposed revised definition of hearing aid compatibility would be consistent with the Commission's goal of ensuring that consumers have access to handset models that are fully hearing aid compatible. WTB asked whether the proposed definition would allow the Commission to determine hearing aid compatibility with certainty and whether a definition that makes general reference to ''established technical standards for hearing aid coupling or compatibility'' would be consistent with the Administrative Procedure Act (APA) or other legal requirements. In response to the Public Notice, the Consumer Technology Association (CTA) expresses support for the Task Force's proposed definition, arguing that a more flexible approach encourages innovation while ensuring objective testing standards. In reply comments, the Task Force states that the definition of hearing aid compatibility should incorporate current and alternative hearing aid compatibility technologies.

27. *HAC Task Force Definition.* The Commission seeks comment on the HAC Task Force proposed definition of hearing aid compatibility, including whether it could adopt the definition in a manner that is consistent with the statutory requirements of section 710(c) of the Communications Act. Section 710(c) provides that ''[t]he Commission shall establish or approve such technical standards as are required to enforce this section.'' Further, this section states that ''[a] telephone or other customer premises equipment that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders . . . will be considered hearing aid compatible for purposes of this section.'' It also states that ''[t]he Commission shall consult with the public, including people with hearing loss, in establishing or approving such technical standards.'' Finally, this section states that ''[t]he Commission shall remain the final arbiter as to whether the standards meet the requirements of this section.''

28. Is the more flexible definition of hearing aid compatibility that the Task Force proposes consistent with section 710(c)? Does section 710(c) require the Commission to continue to define hearing aid compatibility through technical standards that the Commission incorporates by reference into its rules or does it permit the Commission to recognize technical standards that industry and consumers are using for hearing aid compatibility without adopting those standards through a rulemaking process? Commenters should provide a detailed analysis of why their approach is consistent with statutory requirements, including why the commenter's proposal is more consistent with the public interest than the Commission's current approach. This analysis should also explain the costs and benefits of the commenter's proposed approach versus the Commission's current approach.

29. In adopting technical standards into its hearing aid compatibility rules, the Commission has relied historically on standards that were developed by organizations composed of handset manufacturers, wireless service providers, and, in some cases, groups that represent consumers with hearing loss who, through a consensus-driven process, create or revise technical standards. The standards development process does not necessarily include an opportunity for members of the public to participate in the initial creation of new technical standards. Once these technical standards bodies have developed a new standard, they petition the Commission to adopt the new standard into the hearing aid compatibility rules. The Commission accomplishes this task in compliance with the APA and Communications Act through notice and comment rulemaking that allows the Commission to meet public participation requirements.

30. The HAC Task Force recommends, however, that the Commission adopt a more forward-looking definition of hearing aid compatibility that would allow for the express incorporation of alternative and innovative technologies that can enable compatibility between handset models and hearing aid devices. As stated above, the Task Force proposes that the Commission define a hearing aid-compatible handset model as a handset model that: (1) has an internal means for compatibility; (2) meets established technical standards for hearing aid coupling or compatibility; and (3) is usable. The Commission seeks comment on each part of the HAC Task Force's proposed definition of hearing aid compatibility, as discussed below.

31. ''*Internal Means of Compatibility.*'' The Task Force recommends that the Commission define an ''internal means of compatibility'' to mean that ''the capability must be provided as an integral part of the phone, rather than through the use of add-on components that significantly enlarge or alter the

shape or weight of the phone as compared to other phones offered by the manufacturer.'' The Commission seeks comment on this aspect of the HAC Task Force's proposed definition of hearing aid compatibility. As the Task Force notes, its proposed definition of ''internal means of compatibility'' is based on language from the *2003 HAC Order.* This Order recognized that section 710(b)(1)(B) of the Act refers to providing for internal means for effective use with hearing aids. The Commission interpreted this to mean that the capability must be provided as an integral part of the handset model, rather than through the use of add-on components that significantly enlarge or alter the shape or weight of the handset model as compared to other handset models offered by manufacturers. Commenters supporting or opposing this part of the HAC Task Force's proposed definition of hearing aid compatibility should explain why they support or oppose this part of the definition and whether it is consistent with the Commission's recognition of a possible Bluetooth coupling standard. Is this part of the Task Force's proposed definition clear and can it be applied effectively by testing organizations? Does it include the types of connectivity components that are desirable to include, and exclude those that are undesirable to include?

32. ''*Meets Established Technical Standards.*'' The Commission seeks comment on the ''meets established technical standards for hearing aid coupling or compatibility'' portion of the HAC Task Force's proposed definition. With respect to this portion of the definition, the Task Force states that ''[a]ny established technical standard for hearing aid coupling should be interoperable, non-proprietary, and adopted by industry and consumers alike.'' The HAC Task Force also ''recommends that the Commission consider factors such as ease-of-use, reliability, industry adoption, and consumer use and adoption when evaluating what technical standards'' would meet the proposed definition. The Commission seeks comment on this approach, particularly because use of an ''established technical standards'' definition would be in contrast to an approach that would seek to reference each and every possible technical standard within § 20.19 of its rules. The Commission notes that incorporating multiple standards by reference may be particularly difficult where technology is rapidly changing, new or revised standards continue to be developed, and the legal requirements for incorporating specific technical standards by reference into Commission regulations may be resource intensive and would necessarily lag behind marketplace developments.

33. If the Commission adopts this approach, how should it evaluate whether a standard is ''established'' and ''adopted by industry and consumers alike?'' What criteria should the Commission rely on to make these determinations? To be deemed ''established,'' would a given standard have to be adopted by all manufacturers and consumers or just a certain percentage of manufacturers and consumers, and how would the Commission measure the degree of acceptance of a standard by industry and consumers? How would testing bodies and the Commission's Office of Engineering and Technology determine compliance with such standards? Further, should the Commission qualify the term ''non-proprietary'' in the Task Force's proposed definition, to permit reliance on proprietary Bluetooth standards, as discussed in the next section?

34. Further, would adopting this portion of the definition be consistent with the section 710(c) requirement that a wireless handset model is hearing aid compatible if it is compliant with relevant technical standards developed through a public participation process and in consultation with interested stakeholders, including people with hearing loss, as discussed above? The Commission notes that section 710(c) appears to provide that a handset model may be deemed compatible by complying with a technical standard that has not yet been affirmatively adopted or approved by the Commission:

> The Commission shall establish or approve such technical standards as are required to enforce this section. *A telephone or handset that is compliant with relevant technical standards developed through a public participation process and in consultation with interested consumer stakeholders (designated by the Commission for the purposes of this section) will be considered hearing aid compatible for purposes of this section, until such time as the Commission may determine otherwise.* The Commission shall consult with the public, including people with hearing loss, in establishing or approving such technical standards. The Commission may delegate this authority to an employee pursuant to section 155(c) of this title. The Commission shall remain the final arbiter as to whether the standards meet the requirements of this section.

35. Should the Commission interpret section 710(c) to permit handset models to be designated as hearing aid compatible based on a technical standard that has been ''developed through a public participation process'' and in consultation with designated consumer stakeholders, even if the standard has not yet been adopted or approved by the Commission? How should the Commission define and determine compliance with such a ''public participation process'' and consumer consultation? Would the Commission's adoption of such a procedure be consistent with the Commission's other section 710 obligations, the Administrative Procedure Act, and the U.S. Constitution?

36. Further, would this approach be sufficiently certain for enforcement purposes as required by section 710(c)? If the Commission took this approach, how would it enforce such a standard? Alternatively, can the Commission adopt the Task Force's proposed definition, while still incorporating by reference industry-developed standards for hearing aid compatibility into its rules, consistent with its current approach?

37. ''*Is Usable.*'' Finally, the Commission seeks comment on the third aspect of the HAC Task Force's proposed definition of hearing aid compatibility. The Task Force explains that it defines ''usable'' in a manner consistent with the Commission's accessibility requirements. Specifically, the Task Force states that ''usable'' refers ''to ensuring that an individual has adequate information on how to operate a product and access to the 'full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities.' '' The Commission seeks comment on incorporating this aspect of the proposed definition into its rules. What does this aspect of the HAC Task Force's proposed definition add to the Commission's hearing aid compatibility rules that its rules do not already cover? Does ''usable'' mean anything more than complying with Commission regulations and practicing good consumer relations?

38. *Office of the Federal Register Regulations.* The Commission also seeks comment on the HAC Task Force's proposed definition in light of the Office of the Federal Register incorporation by reference regulations. When the Commission incorporates by reference a new hearing aid compatibility standard into its rules, it must request approval from the Director of the Federal Register by submitting a request for approval that complies with Office of the Federal

Register incorporation by reference requirements. Among other requirements, the Office of the Federal Register rules state that ''[i]ncorporation by reference of a publication is limited to the edition of the publication that is approved'' and ''[f]uture amendments or revisions of the publication are not included.'' Further, the Office of the Federal Register requires that the Commission ''[e]nsure that a copy of the incorporated material is on file at the Office of Federal Register.'' The Commission also makes the document being incorporated by reference available for inspection in the Commission's public reference room.

39. As a result, when the Commission requests Director of the Federal Register's approval, it must ensure that the standard that it asks to be incorporated by reference is limited to the approved edition and make clear that future updates to the standard are not incorporated by reference without going through notice and comment rulemaking. Further, to ensure that any technical standard is ''reasonably available'' to affected parties, the Commission would ensure that a copy of the incorporated standard is on file at the Office of Federal Register and make a copy of the standard available for public inspection in its reference room. The Commission seeks comment on whether there is a way for it to continue to incorporate by reference ANSI standards for hearing aid compatibility into its rules, while allowing for a more flexible approach for alternative technologies, such as Bluetooth technologies. Is there a way to distinguish alternative coupling technologies, such as Bluetooth technologies, from the traditional ANSI coupling capabilities?

40. The Commission also seeks comment on how the Commission could comply with the Office of the Federal Register incorporation by reference regulations if it adopted a specific Bluetooth standard, such as the non-proprietary Bluetooth Low Energy Audio (Bluetooth LE Audio) and the Bluetooth Hearing Access Profile (Bluetooth HAP) standards. Could the Commission submit a copy of the Bluetooth LE Audio and Bluetooth HAP standards to the Director of the Federal Register with its request for incorporation by reference permission and then make a copy of these standards available for public inspection in the Commission's reference room? Further, how would the Commission address updates to these standards given that the Commission can only incorporate by reference an approved edition of a standard? Is there another way consistent with statutory requirements that would allow the Commission to recognize these standards without following the traditional incorporation by reference process and that would allow the standards to be updated as industry releases revised versions of these standards?

2. Expanding the Definition of Hearing Aid Compatibility To Include Bluetooth Connectivity

41. As part of the *2016 HAC Order,* the Commission requested that the HAC Task Force consider whether the 100% hearing aid compatibility goal could be achieved in part or in whole by relying on alternative hearing aid compatibility technologies, such as Bluetooth, bearing in mind the importance of ensuring interoperability between hearing aids and alternative technologies. The Task Force's Final Report recommends that the Commission move to a hearing aid compatibility standard that requires a handset model to be able to couple with hearing aids using two of three possible methods. All handset models would have to be capable of coupling using acoustic coupling and these handset models would also have to be capable of coupling through either a telecoil that meets certification standards or through Bluetooth connectivity. In response to WTB's Public Notice seeking comment on the Task Force's recommendation, most commenters expressed support for the Task Force's proposal to permit Bluetooth connectivity to be used as an alternative coupling method to telecoils, noting that most consumers are already using hearing aids that come with Bluetooth connectivity.

42. In light of the record, the Commission proposes to expand the definition of hearing aid compatibility to include Bluetooth connectivity, and it seeks comment on the best way to accomplish this objective. Below, the Commission proposes to require handset models to connect to hearing aids through Bluetooth connectivity as an alternative to telecoil coupling on a limited basis as it continues to study this issue, as long as both types of handset models also meet applicable acoustic coupling and volume control standards. As part of its proposal, the Commission seeks comment on whether it should take a ''market based'' approach to Bluetooth technology whereby the Commission would not explicitly adopt or incorporate by reference a single Bluetooth connectivity technology but would allow market forces to continue to determine which Bluetooth technology handset models use to pair with hearing aids. Alternatively, the Commission seeks comment on an approach whereby the Commission would broaden the current definition of hearing aid compatibility by explicitly incorporating by reference one or more non-proprietary Bluetooth connectivity standards, such as Bluetooth LE Audio and Bluetooth HAP, into the wireless hearing aid compatibility rules, the use of which would be required on a non-exclusive basis.

a. Requiring Bluetooth Connectivity as an Alternative Coupling Method to Telecoil Coupling

43. *Background.* The HAC Task Force states that based on a survey that it conducted, most consumers prefer to use Bluetooth connectivity for pairing hearing aid devices with wireless handsets, as compared to acoustic and telecoil coupling methods. Further, it explains that unlike telecoils, Bluetooth audio transmission methods are expressly designed to transmit and facilitate audio. According to the HAC Task Force, consumers are increasingly using—and are increasingly finding a satisfying listening experience with using—Bluetooth connectivity. Bluetooth technology is an umbrella term for related technical standards that enable devices to communicate wirelessly. Some of these standards are proprietary standards, such as Apple's Made-for-iPhone (MFi) and Google's Audio Streaming for Hearing Aids (ASHA) standards and other standards are non-proprietary standards, such as LE Audio and Bluetooth HAP standards. The Task Force indicates that variations of these Bluetooth standards can be found in many of today's handset models. In fact, the HAC Task Force states that ''[t]he vast majority of wireless handsets now include at least some type of Bluetooth audio technology, without a regulatory mandate . . . .'' The Task Force expects even greater use of Bluetooth connectivity in the coming years.

44. The vast majority of commenters support the Task Force's findings with respect to Bluetooth coupling between wireless handset models and hearing aids. Bluetooth Special Interest Group, Inc. (Bluetooth SIG) states that more than 80% of hearing aids today use some form of Bluetooth technology, and that the Commission should adopt Bluetooth as a primary coupling method. CTA states that nine out of ten consumers own smartphones with Bluetooth and two-thirds report that their hearing device includes satisfactory direct Bluetooth audio streaming. Samsung expresses support for the consensus recommendation on coupling requirements and notes that

Bluetooth is among the top three most frequently mentioned features included in hearing devices desired by consumers. The Mobile & Wireless Form (MWF) states that Bluetooth is a dominant wireless technology and used in over-the-counter hearing aids.

45. The Task Force's Final Report notes, however, that there is a subset of consumers that continue to use telecoils and that these consumers find telecoils to be an important feature in wireless handset models. This finding is consistent with a comment arguing that telecoil coupling facilitates interoperability, is more reliable than Bluetooth, is consistent across devices, and does not require replacing hearing aids or a handset when the other is updated. This commenter states that through its HAC rules, the Commission is helping to maintain the availability of telecoils and urges the Commission to have a 100% telecoil requirement.

46. *Discussion.* The Commission proposes to require some handset models to connect to hearing aids through Bluetooth connectivity as an alternative to telecoil coupling on a limited basis as it continues to study this issue. The Commission seeks comment on this proposal. The record indicates that Bluetooth coupling is presently being widely utilized by consumers to couple handsets with hearing aids and achieving positive results. Under its proposal, the Commission will maintain a telecoil requirement but require a certain percentage of handset models to use Bluetooth connectivity as an alternative to telecoil coupling as long as both types of handset models also meet applicable acoustic coupling and volume control requirements, as discussed in more detail below.

47. Specifically, the Commission seeks comment on how Bluetooth coupling compares with telecoil coupling as far as interoperability between handsets and hearing aids. Is a handset model that meets telecoil certification requirements more expensive to manufacture then a handset model that substitutes Bluetooth connectivity for a telecoil? Does one type of coupling have better sound quality or maintain its connection better than the other type of coupling? Is it easier to connect a handset to a hearing aid with a telecoil connection versus a Bluetooth connection? What are the costs and benefits of allowing Bluetooth coupling on a limited basis as an alternative to telecoil coupling? Would a gradual transition from telecoil coupling to Bluetooth coupling serve the public interest? As Bluetooth coupling becomes more accepted by consumers, will telecoil coupling become a less favorable way of connecting handsets to hearing aids as the HAC Task Force suggests?

48. The Commission is concerned with the cost to consumers of Bluetooth connectivity versus telecoil coupling. When using Bluetooth connectivity as an alternative to telecoil coupling, how frequently do consumers need to replace hearing aids or a handset when the other is updated? Similarly, does telecoil technology evolve over time, or is it a stable technology that does not change in the way Bluetooth standards are updated and therefore does not require a handset to be replaced when a consumer purchases a new hearing device with telecoil connectivity? In general, do lower priced hearing devices include telecoil or Bluetooth connectivity? Are new over-the-counter hearing aids more likely to include telecoil or Bluetooth connectivity? If they are more likely to include Bluetooth connectivity, what type of Bluetooth technology are they likely to include? How can the Commission ensure that its hearing aid compatibility rules allow consumers to have access to reasonably priced hearing aid-compatible handset models?

49. The Commission also seeks comment on the future of telecoil coupling. Is the HAC Task Force's observation that Bluetooth coupling has been steadily increasing over time while telecoil coupling has been stagnating an accurate reflection of consumer preferences and trends? Is telecoil coupling being replaced with Bluetooth connectivity in the marketplace? Would allowing market conditions to control the replacement of telecoil coupling with Bluetooth connectivity technologies in handset models protect the interests of all consumers? Will relying on market conditions—which may lead to fewer handset models with telecoil coupling—leave behind the needs of consumers who may not be able to update to the newest handset models or hearing aids or who find that telecoil coupling better meets their needs?

b. Alternative Approaches to Adopting a Bluetooth Connectivity Requirement

50. Given its proposal to require Bluetooth coupling in a certain percentage of handset models (either as an alternative to or in place of telecoil)—and in light of the various Bluetooth technologies currently in use in the market—the Commission seeks comment on how to implement Bluetooth coupling into its rules. Specifically, the Commission seeks comment on two alternative approaches to adopting such a requirement: (1) requiring a certain percentage of handset models to meet a Bluetooth technical standard (either proprietary or non-proprietary) without incorporating by reference any particular standard into its rules; or (2) requiring a certain percentage of handset models to meet a (non-proprietary) Bluetooth standard that has been specifically incorporated by reference into its rules. In considering these approaches, the Commission seeks comment on whether there is a need for it to approve and incorporate by reference particular Bluetooth technical standards into its rules for hearing aid compatibility certification or whether the Commission can adopt a Bluetooth connectivity requirement without incorporating by reference a particular standard into the rules.

51. *Market Based Approach to a Bluetooth Requirement.* Given the variety of Bluetooth standards that exist today—both proprietary and non-proprietary—the Commission seeks comment on an approach to implementing a Bluetooth requirement that does not mandate a particular Bluetooth connectivity technology. Under this approach, the Commission would not explicitly adopt or endorse a particular Bluetooth connectivity technology or standard but would allow manufacturers and service providers to determine which Bluetooth technology to use to satisfy the required percentage of Bluetooth-compatible handset models (*e.g.,* the proposed 15% requirement, as detailed below).

52. Would this approach be in the public interest? How would such an approach impact the development of Bluetooth technology in handset models? This approach appears to be consistent with the *2003 HAC Order,* where the Commission noted that Congress expressly avoided technology mandates so as not to ''inhibit future development'' of handset models, provided they are compatible with hearing aids. Further, under this approach, the Commission could continue to monitor the development of Bluetooth connectivity between wireless handset models and hearing aids as it has been doing since the release of the *2016 HAC Order.* If an issue develops in the future, the Commission could take action at that time to resolve the problem. The Commission seeks comment on this analysis.

53. The Commission also seeks comment on whether this approach is consistent with the Commission's obligations under section 710(c). Section 710(c) of the Act states that

''[t]he Commission shall establish or approve such technical standards as are required to enforce this section.'' If the Commission does not establish or approve a specific Bluetooth standard, how can the Commission enforce a Bluetooth connectivity requirement? For the purposes of implementing section 710(c), can a distinction be drawn between the industry-developed standards for the more traditional coupling technologies (*i.e.,* acoustic and inductive) and volume control on the one hand, and the standards developed for Bluetooth technology on the other hand? For example, should the fact that industry has already developed and implemented a variety of proprietary and non-proprietary standards for Bluetooth coupling impact how the Commission evaluates the need for it to adopt a Bluetooth coupling requirement into its rules? Should the Commission rely on the fact that handset manufacturers have already been including various forms of Bluetooth connectivity in their handset models without the Commission's involvement, and more recently have been including updated versions of this form of connectivity that permit lower battery usage and can allow a user to connect to assistive listening devices in movie theaters, convention centers, public transit vehicles, and other ventures?

54. Along these same lines, how would an approach that may allow manufacturers and service providers to meet Bluetooth benchmarks using proprietary standards, be consistent with the ''established technical standard for hearing aid coupling compatibility'' portion of the HAC Task Force's proposed definition for hearing aid compatibility? As noted above, the Task Force proposes that ''[a]ny established technical standard for hearing aid coupling should be interoperable, non-proprietary, and adopted by industry and consumers alike.'' If the Commission adopts this proposed definition, should it limit the permissible Bluetooth standards to non-proprietary standards? Even if the Commission does not adopt a specific Bluetooth standard, should it nevertheless stipulate that any Bluetooth standard that a manufacturer chooses to use in a handset model must at least incorporate LE Audio technology given the efficiency and quality advantages of that technology? Under a market-based approach, could the Commission encourage use of the latest non-proprietary Bluetooth standards, such as the Bluetooth LE Audio and HAP Profile?

55. *Incorporation by Reference of a Non-Proprietary Bluetooth Connectivity Standard.* Alternatively, the Commission seeks comment on requiring a handset model to meet a Bluetooth standard that it has incorporated by reference into its rules in order to meet a Bluetooth requirement. Under this approach, the Commission would broaden the current definition of hearing aid compatibility by explicitly incorporating by reference non-proprietary Bluetooth connectivity standards whose use would be required on a non-exclusive basis. Specifically, the Commission would explicitly incorporate by reference the non-proprietary Bluetooth LE Audio and Bluetooth HAP standards into its hearing aid compatibility rules and require their use instead of a telecoil in a manner consistent with the proposed Bluetooth requirement.

56. Under this approach, handset models could come with other Bluetooth connectivity options, such as Apple's MFi and Google's ASHA proprietary standards, but the handset models also would have to include a non-proprietary Bluetooth standard, such as Bluetooth LE Audio and Bluetooth HAP coupling abilities, in order to satisfy the Commission's certification rules. Handset models that include other Bluetooth technologies rather than the Commission endorsed technologies, such as proprietary technologies, could not be used to satisfy the Bluetooth benchmark, unless the Commission decides to allow interim use of other Bluetooth technologies to meet the Bluetooth benchmark as a means of transitioning to full utilization of the Commission endorsed Bluetooth technology. The Commission seeks comment on this approach.

57. The HAC Task Force's Final Report states that Bluetooth LE Audio is an industry standard and that handset models with Bluetooth LE Audio are likely to increase interoperability with hearing devices entering the marketplace. Further, the Final Report states that Bluetooth HAP, which extends the Bluetooth LE Audio standard, is likely to increase Bluetooth technology's popularity as a coupling method for hearing devices and wireless handsets. The Final Report states, however, that Bluetooth LE Audio and Bluetooth HAP are relatively new standards and that to ensure a seamless transition to full interoperability the Commission should allow the use of well-established standards, such as Bluetooth Classic, ASHA, and MFi in the near term.

58. As an initial matter, the Commission seeks comment on whether it is required by section 710(c) to incorporate specific Bluetooth standards by reference into its rules in order to implement a Bluetooth requirement (*e.g.,* the proposed 15% requirement, as detailed below), or whether it can interpret section 710(c) to allow a handset model to meet a standard that has not been affirmatively adopted or incorporated by reference into the Commission's rules. Further, what are the costs and benefits of this approach relative to the more flexible market-based approach discussed above? Does this approach balance the need to adopt specific Bluetooth standards into the Commission's rules with the need to avoid excluding other standards, the loss of which might force consumers to replace their hearing aids prematurely to avoid connectivity issues with a new handset? How would this approach affect the availability of proprietary Bluetooth standards? Do proprietary Bluetooth technologies provide superior connectivity that would be sacrificed under this approach? What are the quality differences, if any, between the various Bluetooth standards with regard to the consumer experience in coupling and utilizing such Bluetooth technology? Would this approach be feasible in view of the pace at which Bluetooth technologies change and develop? Would one of these approaches better protect the interests of consumers with hearing loss and the ability of handset manufacturers to innovate?

59. If the Commission adopts a specific non-proprietary Bluetooth standard, would the Commission run the risk of tipping the marketplace in favor of Bluetooth LE Audio and Bluetooth HAP rather than another non-proprietary Bluetooth connectivity standard? In addition to Bluetooth LE Audio and Bluetooth HAP, are there other non-proprietary Bluetooth connectivity standards that the Commission should consider incorporating by reference into the wireless hearing aid compatibility rules? Are there other non-proprietary Bluetooth standards in the development stage? How can the Commission ensure that its choice of a non-proprietary Bluetooth standard is best suited to meet the needs of consumers with hearing loss?

60. *Transitional Use of Proprietary Bluetooth Standards.* The Commission also seeks comment on whether it should permit the use of other Bluetooth standards, such as proprietary standards, to satisfy its certification requirements on an interim basis as the industry transitions to full use of the Bluetooth LE Audio and Bluetooth HAP. In its Final Report, the HAC Task Force

states that the Commission should consider incorporating Bluetooth technology such as Apple's MFi and Google's ASHA into the Commission's rules for a period of transition. The Task Force states that Bluetooth LE Audio and Bluetooth HAP represent a long-term goal and current ''widespread use'' of these other Bluetooth standards ''indicates that these methods should be considered to ensure a seamless transition toward full interoperability.''

61. Recently, the HAC Task Force reiterated its commitment to continuing to explore the development and inclusion of Bluetooth LE Audio and Bluetooth HAP in new handset models. How likely is it that handset manufacturers will replace proprietary Bluetooth connectivity in their handset models with non-proprietary standards and over what time period? If the Commission allows the use of proprietary Bluetooth standards to meet the Bluetooth benchmark before transitioning to exclusive use of Bluetooth LE Audio and Bluetooth HAP, how long should the transition period be? What are the costs and benefits of allowing the use of proprietary standards for a period of time while the marketplace transitions to full use of Bluetooth LE Audio and Bluetooth HAP?

62. *Other Approaches to Adopting Bluetooth Standards.* The Commission also seeks comment on whether the Commission should establish a Bluetooth safe harbor or allow WTB to use its delegated authority to approve new Bluetooth connectivity standards or new editions of currently adopted standards that meet certain requirements.

63. Under the safe harbor approach, the Commission would require a certain percentage of handset models to include Bluetooth LE Audio and Bluetooth HAP connectivity technologies, but the Commission would not require compliance with a certain edition or version of these technologies by referencing those editions or versions in its rules. As long as the handset model included some edition or version of the technologies, the handset model would meet certification requirements in terms of the proposal to require a certain percentage of handset models to meet Bluetooth connectivity requirements. Is the establishment of a Bluetooth safe harbor consistent with the requirements of section 710(c)? Under the safe harbor approach, how would the Commission enforce compliance with these technologies if it does not require compliance with a specific edition or version of the technologies?

64. Along these same lines, the Commission seeks comment on whether WTB could use its delegated authority under § 20.19(k) to adopt new Bluetooth connectivity technologies into the hearing aid compatibility rules or use this authority to revise the edition that could be used for certification purposes. Under this approach, the Commission could establish criteria that should guide the Bureau when making the determination of whether to approve a new Bluetooth connectivity standard or new edition of a currently approved standard. Alternatively, the Commission could adopt the Bluetooth connectivity standard and allow WTB to use its delegated authority to approve new editions of the Commission's adopted standard. WTB could make a list of approved standards publicly available that handset manufacturers could use for certification purposes.

65. If the Commission adopted this approach, would WTB be required to use notice-and-comment rulemaking procedures or could WTB release a Public Notice authorizing the use of a new Bluetooth connectivity standard or the use of a new edition of a currently approved standard? Would such an approach be consistent with section 710(c) of the Act and other statutory requirements, such as notice and comment rulemaking procedures? Would the Commission need to differentiate the process of adopting new ANSI standards from the processes of adopting new Bluetooth connectivity standards or editions? If the Commission needed to differentiate the two processes, how would the Commission make this distinction? Would the Commission need to adjust or supplement WTB's delegated authority under § 20.19(k) if it determine to use this approach?

66. *Bluetooth Compliance Requirements.* Finally, the Commission seeks comment on how it could ensure a handset model is in compliance with the Bluetooth standards permitted by any of the above approaches. How could the Commission ensure that a handset model complies with the Bluetooth connectivity standard that the manufacturer indicates that it meets, and how can it ensure that this standard meets minimum consumer requirements for a quality wireless connection with a hearing device?

67. The HAC Task Force suggests that a handset manufacturer should be required to submit a Bluetooth attestation as part of its FCC equipment certification application. The Commission seeks comment on this suggestion. Would the submission of an attestation be sufficient to meet statutory requirements? How could the Commission ensure that a handset model submitted with an attestation actually meets the Bluetooth connectivity standards that the manufacturer indicates is embedded within the handset model? What kind of testing does a handset model undergo in order to receive such an attestation? Should the Commission rely on the Bluetooth standard party's own testing process such that an attestation is sufficient to satisfy that process including any interoperability concerns? Even if a handset model receives an attestation, how can the Commission ensure that the standard that is incorporated into the handset model is robust enough to meet the minimum consumer needs with respect to establishing a quality connection between the handset model and a hearing device?

68. Bluetooth SIG has indicated that it has its own qualification process, which involves testing at the product level for interoperability. If the Commission adopts Bluetooth LE Audio and Bluetooth HAP standards, should the Commission rely on the Bluetooth SIG's own testing process such that an attestation is sufficient to satisfy that process including any interoperability concerns? Is there reason to believe that some Bluetooth standards bodies provide more robust testing then other standards bodies?

C. Compliance Benchmarks

69. *Background.* The Commission's hearing aid compatibility rules require that 85% of the total number of handset models that manufacturers and service providers offer must be certified as hearing aid compatible. The Commission's rules, however, do not impose separate benchmarks for the three components of the 2019 ANSI Standard (acoustic coupling, inductive coupling, and volume control). That is, in order for a handset model to be certified as hearing aid compatible under this standard, the handset model must meet all aspects of the standard and not just certain parts of the standard. Further, the Commission's rules allow handset manufacturers and service providers to grandfather existing hearing aid-compatible handset models for benchmark purposes as long as the handset models are still offered to the public.

70. Under the HAC Task Force's 100% proposal, after the applicable transition period passes, all of the handset models that manufacturers and service providers offer in their handset portfolios would have to be certified as hearing aid compatible. The Task Force

proposes, however, that a portion of handset models could be certified as hearing aid compatible by meeting only certain aspects of the 2019 ANSI Standard's requirements rather than all of the requirements as presently required. Specifically, the Task Force proposes that to meet the 100% compatibility requirement, all handset models would have to meet the 2019 ANSI Standard's acoustic coupling requirements, but only 85% of these handset models would have to continue to meet the 2019 ANSI standard's telecoil coupling requirements. The remaining 15% of these handset models would have to meet a new Bluetooth connectivity requirement. To the extent the handset model ''does not pass the telecoil test, it would have to support Bluetooth, and vice-versa.'' While the Task Force's Final Report does not contain a specific volume control benchmark proposal, recently members of the Task Force reiterated their commitment to working towards the goal that all new handset models will meet hearing aid compatibility requirements and that this will include an applicable volume control requirement.

71. As discussed above, the HAC Task Force has recommended that the Commission consider a ''more forward-looking'' definition of HAC. The Task Force asserts that its proposed 85/15% split between telecoil and Bluetooth coupling requirements is an appropriate way to reflect the popularity of Bluetooth connectivity for pairing hearing aid devices to handsets. According to a survey that it conducted, most consumers prefer to use Bluetooth connectivity for pairing hearing aid devices with wireless handsets, as compared to acoustic and telecoil coupling methods. Further, the Task Force states that unlike telecoils, Bluetooth audio transmission methods are expressly designed to transmit and facilitate audio. By contrast, the HAC Task Force explains, telecoils are a ''by-product'' of certain 1940s-era phone designs that later proved useful to couple to a similarly coiled piece of copper in a hearing aid. Noting that consumers are already familiar with Bluetooth technology, the Task Force reports that the vast majority of wireless handset models now include at least some type of Bluetooth audio technology. The Task Force expects even greater use of Bluetooth connectivity in the coming years and that consumers will prefer Bluetooth applications over acoustic and inductive coupling.

72. The Task Force's Final Report appears to recommend that at the end of its proposed four-year transition period for manufacturers and five-year transition period for service providers, all handset models in a manufacturer's or service provider's overall handset portfolio would have to be certified as hearing aid compatible under the 2019 ANSI Standard, subject to the percentages detailed above. The Final Report, though, is ambiguous regarding the grandfathering of existing handset models that have been certified as hearing aid compatible under older technical standards and are still being offered to the public. While the body of the Final Report does not discuss this issue, it does suggest in its Model Rule section that the current grandfathering rule be kept in place but given a new subparagraph designation. The Final Report does not explain how the grandfathering rule would operate with respect to the overall composition of a handset manufacturer's or service provider's handset portfolio after the end of the relevant transition periods.

73. In response to WTB's Public Notice seeking comment on the Task Force's Final Report, CTA, MWF, and Samsung state that they support the HAC Task Force's consensus recommendations that provide a path to 100% hearing aid compatibility. Further, CTA and Samsung state that they support the Task Force's recommendation regarding the 85% benchmark for telecoil coupling and the 15% benchmark for Bluetooth coupling. Samsung also states that the Commission should adopt a benchmark for the volume control requirement, but it does not propose a benchmark for this requirement. The HAC Task Force states that the Commission should adopt a new Bluetooth connectivity benchmark, and Bluetooth SIG states that the use of a Bluetooth coupling requirement will help the Commission achieve its 100% hearing aid compatibility objective. As noted above, however, an individual commenter argues that the Commission should adopt a 100% telecoil requirement. This commenter states that telecoil coupling facilitates interoperability, is more reliable than Bluetooth, is consistent across devices, and does not require replacing hearing aids or a handset when the other is updated. Further, this commenter states that the Commission ''is helping to maintain the availability of telecoils'' and that the Commission ''should require telecoil technology in 100% of all mobile devices . . . and mandate a timeline for compliance.''

74. *100% Benchmark.* Consistent with its tentative conclusion regarding achievability, the Commission proposes that after the expiration of the relevant transition periods, 100% of the handset models that manufacturers and service providers offer or import for use in the United States must be certified as hearing aid compatible. As part of this requirement, the Commission proposes to require all handset models offered or imported for use in the United States to have at least two forms of coupling, as proposed by the HAC Task Force: (1) 100% of handset models would be required to meet an acoustic coupling requirement; and (2) 100% of handset models would be required to meet *either* a telecoil or a Bluetooth coupling requirement. Specifically, at least 85% of handset models would be required to meet a telecoil requirement and at least 15% of handset models would be required to meet a Bluetooth requirement. Any handset models not meeting a telecoil requirement would be required to meet a Bluetooth requirement, and any handset models not meeting a Bluetooth requirement would be required to meet a telecoil requirement. The Commission seeks comment on this proposal in more detail below and throughout this *NPRM.* These handset models would have to be certified as hearing aid compatible under the requirements of part 2 subpart J—Equipment Authorization Procedures of the Commission's rules, and include the relevant test reports showing compliance with these rules and the Commission's § 20.19 hearing aid compatibility testing requirements for mobile handset models. All of these procedures must be complied with in full for a handset model to be labeled as hearing aid compatible and offered in the United States or imported for use in the United States. Once the relevant transition period ends, handset manufacturers and service providers will no longer be able to offer handset models that are not certified as hearing aid compatible.

75. The Commission seeks comment on its proposal to require all handset models that manufacturers and service providers offer in the United States or imported for use in the United States to be hearing aid compatible after the end of the applicable transition periods. Since the Commission has tentatively concluded above that 100% is achievable, and no commenters opposed or found issue with some form of a 100% requirement when WTB sought comment on the HAC Task Force's Final Report, any commenter objecting to the Commission's proposal should explain why this objective is not achievable using the statutory criteria outlined above.

76. Additionally, the Commission seeks comment below on a proposal—as

well as an alternative approach—for meeting the 100% hearing aid-compatible handset portfolio requirement, including its proposed 85/15% split for telecoil and Bluetooth connectivity. Under the Commission's proposal, manufacturers and service providers could meet the 100% requirement by including grandfathered handset models that have been certified as hearing aid compatible in their overall handset portfolios as long as the handset models are still being offered in the United States or imported for use in the United States, as the Commission's current rule allows. Manufacturers and service providers could meet the 85/15% telecoil/Bluetooth requirement using new or grandfathered handset models. Alternatively, the Commission seeks comment on an approach where it would discontinue its grandfathering rule and not allow handset manufacturers and service providers to count grandfathered handset models certified under older certification standards towards the benchmark. Under this alternative, 100% of the handset models in a manufacturer's or service provider's handset portfolio would have to be certified as hearing aid compatible using the 2019 ANSI Standard's requirements, as modified by a possible telecoil and Bluetooth connectivity split.

77. *Grandfathering Proposal to Reach 100%.* Consistent with its existing rules, the Commission proposes to allow manufacturers and service providers to continue to offer handset models that are already certified as hearing aid compatible under older technical standards after the end of the relevant transition periods. These handset models would be grandfathered, and manufacturers and service providers could include these handset models as part of their 100% handset portfolios as long as the handset models are still being offered. Under this proposal, 100% of handset models would have to meet an acoustic coupling requirement, and could meet this requirement with handset models certified under the 2019 ANSI Standard or with grandfathered handset models (*i.e.,* handset models previously certified using a pre-2019 ANSI Standard). Further, all handset models would have to meet a telecoil or Bluetooth requirement, with at least 85% meeting a telecoil requirement—which could be met using handset models certified under the 2019 ANSI Standard or grandfathered handset models—and with at least 15% meeting a Bluetooth requirement. The Commission seeks comment on this proposal.

78. Under the Commission's grandfathering proposal, handset manufacturers and service providers would have in their handset portfolios handset models that have been certified under different certification standards. For instance, manufacturer and service provider handset portfolios might include handset models certified as hearing aid compatible using the 2011 ANSI Standard and other handset models certified under the 2019 ANSI Standard. With respect to handset models certified under the 2019 ANSI Standard, some of these handset models might be certified as hearing aid compatible under the conditions of WTB's volume control waiver order or, depending on timing, under a new volume control standard that the Commission has adopted. Further, if the Commission adopts the Task Force's proposal regarding the 85/15% split between telecoil and Bluetooth connectivity, manufacturer and service provider handset portfolios might include these types of handset models as well. All of these handset models could be part of a manufacturer's or service provider's 100% hearing aid-compatible handset portfolio as long as the handset models are still being offered.

79. If the Commission adopts this proposal, should it modify its grandfathering rule to allow only a certain percentage of a handset portfolio to include handset models certified under older certification standards or older volume control requirements (*e.g.,* the volume control waiver standard)? Should the Commission modify the grandfathering rule if it adopts a new volume control requirement to replace the waiver condition standard? How would such an approach work and would it require that certified handset models be taken out of a handset portfolio prior to the end of a handset model's product cycle? What would be the costs and benefits of such a rule and how would such a rule impact consumers, manufacturers, and service providers? Would removal of handset models certified under prior standards adversely affect consumers by prematurely removing from the market handset models that are relatively low-priced or that offer special features relied upon by certain groups of customers?

80. If the Commission adopts the Task Force's proposed 85/15% split between telecoil and Bluetooth connectivity, but allows grandfathered handset models to count towards these benchmarks, how should the Commission count handset models certified under pre-2019 ANSI Standards towards this split? Under a grandfathering approach to the 85/15% split, would handset manufacturers and service providers be likely to offer fewer new handset models with telecoil connectivity? Or are market incentives sufficient to ensure that manufacturers and service providers would continue to offer new handset models with telecoil coupling technology? What percentage of handset models have both Bluetooth connectivity and telecoil capabilities? If the Commission adopts its grandfathering proposal, should it impose a requirement on service providers that they have to offer a certain percentage of new handset models that meet telecoil requirements and the rest would have to meet Bluetooth connectivity requirements? If so, what percentage should the Commission impose and how would this percentage work with small or rural service providers that may only add one or two new handset models over a period of years? Alternatively, does the fact that a consumer can purchase a handset directly from a manufacturer and bring the handset to the service provider's network solve this problem? What are the costs and benefits to consumers to having to purchase a handset from a manufacturer and bring it to the service provider for service? What impact does this approach have on manufacturers and service providers?

81. *Alternative Approach to Reach 100%.* Alternatively, instead of allowing grandfathering, should the Commission require 100% of all handset models offered in the United States or imported for use in the United States to meet the 2019 ANSI Standard (or any future ANSI standards), with 100% of handset models meeting the acoustic coupling portion of the 2019 ANSI standard, at least 85% of all handsets models meeting the telecoil portion of the 2019 ANSI standard, and at least 15% meeting a Bluetooth component? Under this approach, manufacturers and service providers would no longer be able to offer handset models certified as hearing aid compatible under earlier (pre-2019) versions of the ANSI standard and would either have to remove these handset models from their handset portfolios or recertify these handset models under the 2019 ANSI Standard. The Commission seeks comment on this approach, as opposed to its proposal above to allow handset models to meet the 100% benchmark using grandfathered handset models. What are the benefits and drawbacks of such an approach? Would an approach that requires service providers and manufacturers either to retire older handset models or certify those handset

models under the 2019 ANSI Standard lead to better options available in the market for consumers with hearing loss? Given the pace of technology advancement, would such an approach be feasible for manufacturers and service providers? Would it be more straightforward and thus (i) easier for manufacturers and service providers to implement; (ii) easier for consumers to understand; and (iii) easier for the Commission to enforce?

82. The Commission seeks comment on the differences between its grandfathering proposal and this alternative approach, including the costs and benefits of each option, and how either approach might impact transition time. Should the Commission consider a hybrid of the two, such as a phased approach that would enable it to reach a 100% benchmark using grandfathered handset models within a shorter period of time, with the ultimate goal of 100% of handset models meeting the 2019 ANSI Standard (or newer ANSI standards as they are developed)? For example, after one year, 75% of handset models could be grandfathered; after two years, 50%; after three years, 25%; and after four years, no grandfathered handset models could be counted towards the 100% benchmark.

83. *Volume Control Benchmark.* Under either the Commission's grandfathering proposal or the alternative 100% 2019 ANSI Standard approach, how should the Commission incorporate the volume control requirement into its benchmarks? As noted above, under the Commission's current rules, as of December 5, 2023, handset models can no longer be certified as hearing aid-compatible using the older 2011 ANSI Standard that does not include a volume control requirement. After this date, handset models can only be certified as hearing aid-compatible if they meet the requirements of the 2019 ANSI Standard and the related TIA 5050 Standard that sets forth volume control requirements for wireless handset models. The recently issued *HAC Waiver Order,* however, modified these requirements by allowing handset models to be certified as hearing aid-compatible if the handset model meets the limited volume control standard set out in that order and all other aspects of the 2019 ANSI Standard. This waiver remains in effect for a two-year period that ends on September 29, 2025.

84. If the Commission adopts an approach where all handset models must be certified as hearing aid-compatible using the 2019 ANSI Standard, as modified by the *HAC Waiver Order,* should it include a 100% volume control requirement at the end of the transition period? On the other hand, if the Commission allows manufacturers and service providers to meet the 100% requirement using grandfathered handset models, as it proposes above, should it impose a requirement that a certain percentage of handset models must meet the volume control portion of the 2019 ANSI Standard, as modified by the *HAC Waiver Order*? Or should the Commission limit the volume control requirement to all new handset models certified as hearing aid compatible using the 2019 ANSI Standard, as modified by the *HAC Waiver Order,* without setting an overall volume control benchmark for the portfolio? How would the grandfathering approach—which means that not all available handset models would meet a volume control requirement—impact consumers with hearing loss?

85. How should the Commission handle the volume control requirement if the Commission adopts a new volume control standard to replace the TIA 5050 Standard, as modified by the *HAC Waiver Order*? Under these circumstances, should the Commission allow a limited grandfathering of handset models that meet the *HAC Waiver Order's* volume control standard and all other aspects of the 2019 ANSI Standard, but not the requirements of the new volume control standard? Should the Commission impose a requirement that these types of handset models should be eliminated from handset portfolios over a certain time period, such as two years from the effective date of the new volume control standard? Alternatively, should the Commission just allow these types of handset models to be phased-out over the handset model's normal product life cycle? What are the costs and benefits to consumers and manufacturers of permitting these types of handset models to be grandfathered?

86. *Telecoil/Bluetooth Benchmarks.* The Commission also seeks comment on implementing its proposed 85/15% split between telecoil and Bluetooth connectivity under the two alternatives discussed above (*i.e.,* its grandfathering proposal and the 100% 2019 ANSI Standard approach), as well as some alternative approaches to setting benchmarks for telecoil and Bluetooth coupling. In this regard, the Commission notes that members of the HAC Task Force have recently reiterated their commitment to working towards the goal of including Bluetooth connectivity as an alternative to telecoil coupling in a certain percentage of handset models as described in the HAC Task Force's Final Report. Under either approach, how does the Commission enforce a requirement that at least 85% of handset models must meet telecoil requirements and at least 15% must meet a Bluetooth connectivity standard? Should the Commission allow a handset model that meets telecoil certification requirements and Bluetooth connectivity requirements to be counted as meeting both the telecoil and Bluetooth connectivity requirements? Should the Commission allow for some fluctuation within a range close to an 85/15% split, or should it strictly enforce that number? For example, should the Commission require that a manufacturer or service provider offer at least 85% of handset models that meet the telecoil requirements and the rest of the handset models offered meet a Bluetooth connectivity standard, without imposing a 15% minimum? If a manufacturer releases one new handset model a year, how many years after the transition date will it take for the 85/15% split to be reached?

87. Instead of its proposed 85/15% split between telecoil and Bluetooth connectivity, the Commission seeks comment on a number of alternative approaches to establishing a telecoil and Bluetooth coupling benchmark.

- Under the first alternative, instead of the Commission's proposed 85/15% split, should it continue to require all handset models to meet the 2019 ANSI Standard's telecoil requirements? This approach would require 100% compliance with all three aspects of the 2019 ANSI Standard (acoustic coupling, telecoil coupling, and volume control) and would ensure that consumers who use telecoils in their hearing aids could purchase any new handset model on the market without having their selection of handset models reduced by an 85% benchmark. This approach would not require a certain percentage of handsets to meet a Bluetooth connectivity requirement.
- Under the second alternative, should the Commission require 100% of new handset models to meet all three aspects of the 2019 ANSI Standard and impose an additional requirement that 15% of these handset models must also meet a Bluetooth connectivity requirement?
- Under the third alternative, should the Commission set a deadline for 50% or more of handset models to incorporate Bluetooth connectivity technology, while retaining an 85% telecoil requirement? This alternative reflects the fact that Bluetooth connectivity is popular among consumers with hearing loss and that 56% of handset models already support

some form of Bluetooth connectivity. Would this approach create redundancy in coupling requirements or provide consumers with hearing loss much needed flexibility to connect with hearing devices?

• Under the fourth alternative, instead of an 85/15% split, should the Commission impose a different telecoil/Bluetooth split such as a 75/25% or 60/40% split or should the Commission's rules provide for a gradual change in the split over a period of years that results in a more even split between the telecoil and Bluetooth coupling requirements?

• Under the fifth alternative, should the Commission avoid imposing a precise percentage and give manufacturers and service providers more flexibility to follow market demands and determine the percentage of handset models that they offer that meet either telecoil or Bluetooth connectivity requirements? Would such a flexible approach benefit or harm consumers with hearing loss and how would the Commission monitor and evaluate whether the split that develops is appropriate or harmful to consumers with hearing loss?

88. The Commission seeks comment on these alternative approaches. Is there a significant additional cost to incorporating both forms of connectivity in a single handset model (even though most new handsets today offer both technologies)? Would any of these approaches impede the development or improvement of handset model technology, either for consumers in general or for consumers with hearing loss? The Commission seeks comment on this issue in light of the Task Force's statement that consumers prefer Bluetooth coupling over telecoil coupling. Is one of these approaches more in the interest of consumers while allowing more opportunity for handset manufacturers to innovate? What are the costs and benefits of each of these approaches or an approach that gradually evens the split between telecoil and Bluetooth coupling requirements over a period of years and what should the period of years be?

D. Transition Periods for 100% Hearing Aid Compatibility

89. The Commission proposes to establish a 24-month transition period for handset manufacturers to meet the 100% benchmark, running from the effective date of an amended rule adopting the 100% requirement, and a 30-month transition period for nationwide service providers. Further, the Commission proposes a 42-month transition period for non-nationwide service providers. The Commission seeks comment on this proposal.

90. While the Commission's proposed transition periods are shorter than the four-year transition period the HAC Task Force recommends for handset manufacturers and the five-year transition period it recommends for service providers, the Commission previously has relied on a two-year transition period when transitioning to new technical standards and the Commission proposes that establishing a two-year transition period again would be appropriate to balance the product development cycles for manufacturers and service providers with the needs of consumers with hearing loss. The longer transition periods the Commission proposes for service providers will allow new handset models certified using the latest certification standards to flow downstream and be available for providers to offer for sale.

91. Given that the Commission adopted the 2019 ANSI Standard in February 2021 and that WTB has conditionally granted ATIS's volume control waiver request, the Commission believes that these transition periods are reasonable. Handset manufacturers have been on notice since February 2021 of the requirements of the new standard and WTB granted ATIS's request to adjust the volume control testing requirements by waiver, based on the conditions set out in the ATIS Ex Parte Letter. Is there any reason why handset manufacturers cannot meet a two-year transition requirement assuming that the volume control testing requirements are those recently approved by WTB and the Commission does not adopt a new volume control standard before the end of the manufacturer transition period? Since the current volume control testing requirements are based on ATIS's request, is there a reason why manufacturers cannot meet ATIS's requested testing methodology by the end of a two-year transition period?

92. In order to meet the 2019 ANSI Standard's requirements and related volume control requirements, is it simply a matter of testing existing hearing aid-compatible handset models under the new standards or is there reason to believe that handset models need to be redesigned to meet the new standards? If handset models have to be redesigned to meet the new standards, would this process already be underway? The Commission notes that the Task Force indicates that part of the reason it is supporting the 85/15% split is because the 2019 ANSI Standard's telecoil testing requirements are ''more difficult'' to meet than the 2011 ANSI Standard's telecoil requirements. Given that the Task Force is accounting for the new telecoil testing standards in its proposed 85/15% split, why does this not support a two-year transition period for manufacturers? Commenters arguing that the new telecoil testing standard requires a longer transition period should explain why adjusting the split downward is not a better solution then drawing out the transition period.

93. The Commission seeks comment on whether manufacturers and service providers can achieve compliance with a 100% requirement within the proposed timeframes, and if not, about potential alternative timeframes. The Commission seeks comment on the steps manufacturers and service providers must take to meet a 100% compliance standard and the scope and timeline of any necessary changes. What, if any, obstacles do manufacturers or service providers anticipate facing? Given the significant public interest in moving quickly to achieve 100% compliance as well as the current extensive availability of hearing aid-compatible handset models, any commenters proposing longer transition periods should provide specific information about why more time is needed.

94. The Commission seeks comment on how the two alternatives outlined above for reaching 100% compatibility (*i.e.,* the grandfathering proposal or the 100% 2019 ANSI Standard approach) would impact transition times. Would the 100% 2019 ANSI Standard approach require a longer transition period to 100% hearing aid compatibility than its grandfathering proposal? What impact would that longer period have on consumers with hearing loss? If the Commission requires 100% of handset models to meet only certain aspects of the 2019 ANSI Standard (or future ANSI standards adopted by the Commission), is a 24-month transition period for manufacturers and a 30-month or 42-month transition period for service providers feasible? Alternatively, if the Commission adopts the 100% 2019 ANSI Standard approach, should it impose the transition period proposed by the Task Force—four years for manufacturers and five years for service providers? Instead of a single timeline, should the Commission develop separate timelines for reaching different aspects of hearing aid compatibility, such as 100% compliance on acoustic coupling, as compared to reaching 100% compliance for ''magnetic/wireless coupling'' (*i.e.,* the 85/15% proposal for telecoil coupling and Bluetooth connectivity), and another

timeline for reaching 100% for volume control?

E. Handset Settings for Hearing Aid Compatibility

95. The Commission's wireless hearing aid compatibility rules do not address whether a handset model by default must come out-of-the-box with its hearing aid compatibility functions fully turned on, or whether it is permissible for a manufacturer to require a consumer to turn these functions on by going into the handset's settings. Further, the Commission's rules do not address whether a handset model can have two different settings: one setting that turns on acoustic coupling and volume control, but not telecoil coupling, and a second separate setting that turns on the handset model's telecoil coupling capabilities. In addition, the Commission's rules do not address whether a handset model in telecoil mode has to continue to fully meet acoustic and volume control requirements.

96. While the Commission's hearing aid compatibility rules do not address this issue, staff has informally advised handset manufacturers that handset models cannot have separate selections for volume control compliance and another for RF interference and telecoil compliance. Staff has stated that only one hearing aid compatibility selection is permitted and multiple selections are not permitted. Recently, staff has been asked whether this informal advice could be modified to allow two hearing aid compatibility modes of operation in a handset model and whether a handset model in telecoil mode must continue to fully meet acoustic coupling and volume control requirements.

97. The HAC Task Force's Final Report does not address this hearing aid compatibility handset model setting issue. The Task Force does recommend, however, that the Commission require acoustic coupling in all handset models and adopt a Bluetooth connectivity requirement as an alternative coupling method to telecoil coupling in a certain percentage of handset models. If the Commission adopts this Bluetooth proposal, then a handset model certified as hearing aid compatible under the 2019 ANSI Standard would have to meet at least three hearing aid compatibility requirements. The handset model would have to meet acoustic coupling and volume control requirements and—depending on the handset model—would also have to meet either a telecoil coupling or Bluetooth connectivity requirement. It is also conceivable that a handset model might meet acoustic, telecoil, and Bluetooth coupling requirements as well as the volume control requirements that WTB recently addressed.

98. Given these potential alternative coupling methods and informal manufacturer requests that the Commission allow more than one mode of operation for hearing aid compatibility in a handset model and detail what each mode of operation must include, the Commission believes stakeholders would benefit from the establishment of a rule, and it seeks comment on this issue. The Commission proposes that after the expiration of the manufacturer transition period, all handset models must by default come out-of-the-box with acoustic coupling and volume control certification requirements fully turned on. The Commission further proposes to permit handset models to have a specific setting that turns on the handset model's telecoil or Bluetooth coupling function, depending on the secondary capability included in a particular handset model. The Commission seeks comment on these proposals as well as whether a handset model operating in telecoil or Bluetooth coupling mode must also continue to meet acoustic coupling and volume control requirements or some aspects of these requirements.

99. In this regard, the Commission seeks comment on whether it is necessary for a handset model in telecoil or Bluetooth coupling mode to continue to fully meet acoustic and volume control requirements. Should the Commission allow handset models operating in telecoil or Bluetooth coupling mode to automatically turn off acoustic coupling or the volume control function, or should it require these functions to remain on or some portion of these functions to remain on? Is it technically feasible for a handset model in telecoil or Bluetooth coupling mode to meet the 2019 ANSI Standard's acoustic and volume control requirements in full or even necessary from a consumer's perspective for a handset model in telecoil mode or Bluetooth coupling mode to meet these requirements? Should a handset model that meets all four hearing aid compatibility requirements be required to meet all aspects of acoustic and volume control requirements or only some part of those requirements when it is operating in telecoil or Bluetooth coupling mode? If it is technically feasible for a handset model to operate with telecoil and/or Bluetooth coupling at the same time as meeting the acoustic coupling and volume control requirements, should the Commission require all available coupling options to be turned on in the handset model's default mode?

100. If the Commission determines to allow more than one hearing aid compatibility mode of operation, it is concerned with how difficult it might be for consumers to discover these features and to understand their functionality. In this regard, should the Commission establish standard hearing aid compatibility settings that would be consistent across all hearing aid-compatible handset models? Would it be helpful if the Commission were to establish uniform, industry-wide nomenclature for compatibility modes in handset models? If the Commission allows a handset model to have two compatibility modes, what should it call these modes? Should the default mode be called HAC mode and the second mode be called Telecoil or Bluetooth mode, depending on the handset model? What if a handset model meets all four hearing aid compatibility requirements? Under these circumstances, should it allow three different modes of compatibility and, if so, what should the Commission require each of these modes to be called, and what hearing aid compatibility functions should it require to be included in each mode?

101. Commenters should fully explain why they support or oppose the Commission's proposals for different modes of operations and why the Commission's proposals are in the public interest or not in the public interest. What are the costs and benefits of each of the Commission's proposals? What are the advantages and the disadvantages of the Commission's proposals in terms of their impact on handset manufacturers and consumers?

F. Consumer Notification Provisions

1. Labeling and Disclosure Requirements

102. The Commission seeks comment on whether to revise the labeling and disclosure requirements in § 20.19(f). As stated above, the Commission proposes that, after the expiration of the applicable transition period for handset manufacturers, all handset models must be certified as hearing aid compatible. Further, the Commission proposes that at least 85% of these handset models must meet a telecoil coupling requirement and that at least 15% of these handset models must meet the Commission's new Bluetooth coupling requirement. The Commission proposes using either its grandfathering proposal or a 100% 2019 ANSI Standard alternative. Under either approach, the Commission proposes that all new handset models must be certified using

the 2019 ANSI Standard's acoustic coupling requirements and the related volume control requirements, and that all new handset models must meet either the standard's telecoil coupling requirement or a Bluetooth requirement. If the Commission adopts these proposed changes, it tentatively conclude that it should revise the package labeling provisions in § 20.19(f)(1) of the Commission's rules to reflect these changes. Specifically, it tentatively concludes that the handset model's package label must state whether the handset model includes telecoil coupling capability that meets certification requirements; includes Bluetooth connectivity as a replacement for meeting telecoil certification requirements; or includes both. The Commission seeks comment on whether revising the package labeling rule in this way would be sufficient to ensure that consumers can easily determine from looking at a handset model's package label whether the handset model has the coupling ability that meets their needs.

103. The Commission also tentatively concludes that it should make a corresponding change to the package insert and handset user manual requirements in § 20.19(f)(2) to require information in a package insert or user manual about whether a handset model meets telecoil certification requirements; replaces this requirement with Bluetooth coupling ability; or includes both. Section 20.19(f)(2) establishes labeling and disclosure requirements for manufacturers and service providers and requires them to include certain information about the hearing aid compatibility of each handset model in a package insert or user manual for the handset. For new handset models that use Bluetooth coupling rather than telecoil coupling to meet Commission requirements, the Commission proposes to require that the package insert or handset model user manual explain that the handset model does not meet telecoil certification requirements and instead couples with hearing aids using a Bluetooth standard and provide the name of that Bluetooth standard. The Commission seeks comment on whether revising the rule in this way would provide sufficient information for consumers.

104. Further, if the Commission allows handset models to have default and secondary hearing aid compatibility modes of operation, it tentatively concludes that it should modify its handset package insert and user manual requirements to require an explanation of each of these modes, what each mode does and does not include, and how to turn these settings on and off. The Commission seeks comment on this proposal. How can the Commission ensure that consumers can easily understand these modes of operation and what each mode of operation includes and does not include? Besides the name of the mode, how does the Commission ensure that consumers can easily find these modes in a handset model's setting and that the modes are not buried in subheadings? Commenters supporting this modification should provide examples of what the package insert or user manual rule should state. Commenters supporting or opposing this change should explain why this change is or is not in the public interest and why this change is consistent or inconsistent with section 710(d) of the Act.

2. Digital Labeling Technology

105. As an additional proposed change to § 20.19(f)(2), the Commission proposes to permit manufacturers and service providers to provide the information required under this section to consumers through the use of digital labeling technology (*e.g.,* quick response (QR) codes) on handset boxes rather than through a package insert or user manual. A QR code is a type of barcode that can be read easily by a digital device, such as a handset with a camera, and is typically used for storing Uniform Resource Locator (URL) information. Companies often use QR codes to link consumers to a company's web page in order to provide consumers with additional information on a company product.

106. When the Commission adopted the requirement for package inserts, it considered requests from industry to give manufacturers and service providers more flexibility in the methods used to convey information on a handset model's hearing aid compatibility and volume control capabilities, including providing this information online rather than in the packaging insert or user manual. The Commission found, however, that consumers may not necessarily visit service provider websites before going to a service provider's store and purchasing a hearing aid-compatible handset. Therefore, the Commission required that package inserts and user manuals be provided with hearing aid-compatible handset models and that this information not just be provided online.

107. The Commission proposes to reconsider its determination and allow manufacturers and service providers to meet the requirements of § 20.19(f)(2) through the use of digital labeling technology such as QR codes on handset boxes, or other accessible formats. When the Commission required manufacturers and service providers to include this information in package inserts or user manuals and declined to permit this information to be provided online, it based its decision on its finding that consumers may not necessarily visit service provider websites before going to a service provider's store and purchasing a hearing aid-compatible handset. By contrast, permitting service providers and manufacturers to include QR codes on handset packaging would not require consumers to visit a website before purchasing a handset and instead would provide consumers with access to relevant information at the point of sale while consumers are in stores making purchasing decisions. Further, permitting manufacturers and service providers to use QR codes on a handset model's package as an alternative to including a paper insert or user manual with the required hearing aid compatibility information could help ensure that consumers receive more up to date information, while saving paper and helping to streamline packaging.

108. The Commission seeks comment on this proposal and whether permitting the use of QR codes would be an effective alternative approach for ensuring that consumers with hearing loss receive relevant hearing aid compatibility information when purchasing their mobile devices. Would allowing the use of QR codes provide a more consumer friendly approach then continuing to require the use of paper inserts and user manuals? How familiar are consumers with QR codes? Are there enough consumers that are not familiar with QR codes that the Commission should continue to require the use of paper inserts and user manuals in addition to allowing the use of QR codes? Do consumers have the ability to scan a QR code before purchasing a handset, or would they have to rely on store employees to scan the code for them so that they could read the information?

109. Do paper inserts and user manuals have benefits that QR codes cannot provide? If so, what are these benefits? Along these same lines, are there other types of digital labeling technology that the Commission should consider permitting as either an alternative to or in conjunction with the use of QR codes? What are these other digital labeling technologies? Further, if the Commission allows the use of digital labeling technology as an alternative to paper inserts and user manuals, how can it ensure that these methods of labeling do not become obsolete before it can update the labeling rules? Finally, what are the costs and benefits of

permitting the use of QR codes or other types of digital labeling as an alternative to continuing to require the use of paper inserts and user manuals?

3. Handset Model Number Designation

110. The Commission seeks comment on whether to update its rule on handset model number designations. Section 20.19(g) of the Commission's rules requires that ''where a manufacturer has made physical changes to a handset that result in a change in the hearing aid compatibility rating under the 2011 ANSI standard or an earlier version of the standard, the altered handset must be given a model designation distinct from that of the handset prior to its alteration.'' The Commission seeks comment on how this rule should apply in cases where a handset model that has passed the 2011 ANSI Standard and has an assigned model number subsequently passes the 2019 ANSI Standard. Under the current rule, if there have been no physical changes to the handset model (*i.e.,* no changes in hardware or software) a new model number would not be required, but the handset manufacturer may issue the handset model a new model number if it chooses to.

111. In these cases, where a handset model that is already certified as hearing aid compatible is re-certified under an updated ANSI standard, the Commission seeks comment on whether to revise the rule to require a manufacturer to issue a new model number even if there is no physical change to the handset model. Would revising the rule to require manufacturers to issue a new model number for such handset models benefit consumers with hearing loss by making it easier for them to identify the handset models that have been certified under updated standards? How would consumers be able to discern which models have been certified under updated standards otherwise? Would the costs or other burdens associated with such an approach be significant enough to outweigh the potential benefits for consumers?

G. Website, Record Retention, and Reporting Requirements

1. Website and Record Retention Requirements

112. After the end of the applicable transition periods, the Commission tentatively concludes that it should require handset manufacturers and service providers to identify on their publicly accessible websites which handset models in their handset portfolios meet telecoil certification requirements. For those handset models that do not meet telecoil certification requirements, the Commission tentatively concludes that handset manufacturers and service providers must affirmatively state that the handset model does not meet telecoil certification requirements and identify which Bluetooth connectivity standards the handset model meets instead. The Commission also tentatively concludes that handset manufacturers and service providers must identify on their publicly accessible websites the conversational gain with and without hearing aids for each handset model that they offer regardless of whether the handset model meets telecoil certification standards or includes Bluetooth connectivity instead. The posting of a handset model's conversational gain with and without hearing aids is consistent with the Commission's current handset model package label rule. The Commission believes that all of this information is essential for consumers to have access to in order to purchase handset models that meet their individual needs.

113. The Commission seeks comment on these tentative conclusions. Commenters opposing these tentative conclusions should clearly explain why these tentative conclusions are not in the public interest. What are the costs and benefits of these tentative conclusions? The Commission notes that if it allows the use of QR codes or other digital labeling technology as an alternative to paper inserts or user manuals, this may be the only way a consumer might be able to access some of this information. Further, consumers might research this information online before going to a store or may actually buy the handset online without going to the store. Commenters should provide a detailed explanation as to why they support or oppose these tentative conclusions.

114. Further, if the Commission adopts a 100% hearing aid compatibility requirement, it seeks comment on whether to streamline other components of the website and record retention requirements in the Commission's rules. In 2018, the Commission imposed new website posting requirements for service providers and required providers to retain information necessary to demonstrate compliance with the Commission's wireless hearing aid compatibility rules. Under these requirements, each manufacturer and service provider that operates a publicly-accessible website must make available on its website a list of all hearing aid-compatible handset models currently offered, the ANSI standard used to evaluate hearing aid compatibility, the ratings of those handset models under the relevant ANSI standard, if applicable, and an explanation of the rating system. In addition, service providers must post on their websites: a list of all non-hearing aid-compatible handset models currently offered, as well as a link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service providers' obligations. Each service provider must also include the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible handset model currently offered.

115. Service providers must also retain on their website a link to a third-party website as designated by the Commission or WTB, with information regarding hearing aid-compatible and non-hearing aid-compatible handset models or, alternatively, a clearly marked list of hearing aid-compatible handset models that have been offered in the past 24 months but are no longer offered by that provider. The rules also require that the information on a manufacturer's or service provider's website must be updated within 30 days of any relevant changes, and any website pages containing information so updated must indicate the day on which the update occurred.

116. Further, the rules require service providers to retain internal records for discontinued handset models, to be made available upon Commission request of: (1) handset model information, including the month year/ each hearing aid-compatible and non-hearing aid-compatible handset model was first offered; and (2) the month/year each hearing aid-compatible handset model and non-hearing aid-compatible handset model was last offered for all discontinued handset models until a period of 24 months has passed from that date.

117. The Commission seeks comment on whether to streamline these requirements by eliminating the requirement to post or retain information about non hearing aid-compatible handset models. If the Commission requires that 100% of handset models be hearing aid compatible, it does not anticipate that there would continue to be a need for providers to post information about non hearing aid-compatible handset models on their websites. Do commenters disagree? Should the Commission continue to require service providers to post information and keep records about the non-hearing aid-compatible handset

models they offered previously? Would doing so provide useful information for consumers? If the Commission adopts the 100% compliance standard, would the website and record retention rules continue to be necessary to help ensure compliance with the hearing aid compatibility requirements?

2. FCC Form 655 and 855

118. In this section, the Commission tentatively concludes that after the handset manufacturer 100% transition period ends, it will revise the handset manufacturer annual reporting requirement by eliminating the requirement that a manufacturer use FCC Form 655 for reporting purposes and instead replace this requirement with the requirement that it use FCC Form 855 for reporting purposes. FCC Form 855 is the same form that service providers presently file to show compliance with the Commission's wireless hearing aid compatibility provisions. The Commission also tentatively concludes that after the expiration of the manufacturer transition period, it will change the reporting deadline for handset manufacturers from July 31 each year to January 31 each year. Along with requiring handset manufacturers to file the same form as service providers, this change would align the filing deadline for handset manufacturers with the current filing deadline for service providers. The Commission seeks comment on these tentative conclusions below.

119. *Background.* Under § 20.19(i), handset manufacturers are presently required to submit FCC Form 655 reports on their compliance with the Commission's hearing aid compatibility requirements each year. FCC Form 655 requires manufacturers to provide information on: (i) handset models tested since the most recent report, for compliance with the applicable hearing aid compatibility technical ratings; (ii) compliant handset models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number; (iii) for each compliant model, the air interface(s) and frequency band(s) over which it operates, the hearing aid compatibility ratings for each frequency band and air interface under the ANSI standard (if applicable), the ANSI standard version used, and the months in which the model was available to service providers since the most recent report; (iv) non-compliant models offered to service providers since the most recent report, identifying each model by marketing model name/number(s) and FCC ID number; (v) for each non-compliant model, the air interface(s) over which it operates and the months in which the model was available to service providers since the most recent report; (vi) total numbers of compliant and non-compliant models offered to service providers for each air interface as of the time of the report; (vii) any instance, as of the date of the report or since the most recent report, in which multiple compliant or non-compliant devices were marketed under separate model name/numbers but constitute a single model for purposes of the hearing aid compatibility rules, identifying each device by marketing model name/number and FCC ID number; (viii) status of product labeling; (ix) outreach efforts, and (x) if the manufacturer maintains a public website, the website address of the page(s) containing the required information regarding handset models.

120. Section 20.19(i) also requires that service providers submit FCC Form 855 each year certifying under penalty of perjury their compliance with the Commission's hearing aid compatibility requirements. Certifications filed by service providers must include: (i) the name of the signing executive and contact information; (ii) the company(ies) covered by the certification; (iii) the FCC Registration Number (FRN); (iv) if the service provider maintains a public website, the website address of the page(s) containing the required information regarding handset models; (v) the percentage of handset models offered that are hearing aid compatible; and (vi) a statement certifying that the service provider was in or was not in full compliance with the hearing aid compatibility provisions for the reporting period.

121. Prior to the *2018 HAC Order,* the Commission required service providers to show compliance with the Commission's wireless hearing aid compatibility provisions by filing FCC Form 655 just as handset manufacturers are presently required to do. In the *2018 HAC Order,* however, the Commission took steps to reduce regulatory burden on service providers by eliminating annual service reporting requirements and allowing service providers to instead file a streamlined annual certification stating their compliance with the Commission's hearing aid compatibility requirements. The Commission found that many of the benefits of annual status reporting by service providers had become increasingly outweighed by the burdens that such information collection placed on those entities. The Commission noted that the action it was taking would streamline ''the Commission's collection of information while continuing to fulfill the underlying purposes of the current reporting regime.''

122. While the *2018 HAC Order* did not change the reporting requirements for handset manufacturers, the Commission noted that in the 100% hearing aid compatibility docket it was considering broader changes to the hearing aid compatibility rules that may be appropriate in the event it required 100% of covered handset models to be hearing aid compatible. The Commission indicated that the website, record retention, and certification requirements it was adopting as part of the *2018 HAC Order* would remain in place unless and until the Commission took further action in the 100% hearing aid compatibility docket and that its decisions did not ''prejudge any further steps we may take to modify our reporting rules in that proceeding.''

123. Currently, handset manufacturer compliance filings are due by July 31 each year and cover the reporting period from the previous July 1 to June 30. Service providers compliance filings are due by January 31 of each year and cover the previous calendar year—January 1 through December 31.

124. *Discussion.* The Commission seeks comment on its tentative conclusions to require handset manufacturers to file FCC Form 855 instead of FCC Form 655 and to align the filing deadline for handset manufacturers to the January 31 deadline that currently applies to service providers. Is moving handset manufacturers to FCC Form 855 after the end of the manufacturer transition period consistent with a 100% hearing aid compatibility standard? If the Commission requires all handset models to be hearing aid compatible, would requiring manufacturers to submit information on the more detailed FCC Form 655 still be necessary? After the transition period expires, handset manufacturers will no longer be permitted to offer non-hearing-aid compatible handset models. Is there any reason why the Commission would need to continue to collect information about handset models such as the marketing name or model number, air interface, or months offered?

125. Is it in the public interest to move handset manufacturers to FCC Form 855 once the handset manufacturer transition period ends? The Commission seeks comment on the relative costs and benefits of moving handset manufacturers to FCC Form 855 rather than continuing to require them to file FCC Form 655. Would moving

manufacturers to FCC Form 855 be sufficient to emphasize to manufacturers the importance of compliance with the Commission's rules while reducing the burdens of gathering, formatting, and submitting data for FCC Form 655? Similarly, would aligning the manufacturer compliance filing deadline with the current January 31 deadline for service providers provide for efficiencies or create any difficulties for handset manufacturers or service providers?

126. As discussed above, as part of its proposal for a 100% hearing aid compatibility benchmark, the Commission proposes to require that at least 85% of handset models offered meet a telecoil coupling requirement and that at least 15% of handset models offered meet a Bluetooth connectivity requirement. If the Commission adopts these proposed benchmarks, should it retain the FCC Form 655 reporting obligation for handset manufacturers so that it can monitor manufacturers' compliance, or would it be sufficient to require manufacturers to certify that they are in compliance with these requirements and all other requirements by filing under penalty of perjury FCC Form 855 as service providers presently do? Given the Commission's proposal that handset manufacturers would have to indicate on their websites which of their offered handset models meet telecoil certification standards and which do not, would such a requirement eliminate the need to require manufacturers to file FCC Form 655 and allow the Commission to replace this requirement with a requirement that they file FCC Form 855?

127. In addition, if the Commission adopts its grandfathering proposal for the 100% requirement, handset manufacturers would have in their handset portfolios handset models certified under different certification standards, including some handset models certified under the 2011 ANSI Standard and others certified under the 2019 ANSI Standard. Would maintaining the FCC Form 655 reporting requirement be necessary to obtain information about the different hearing aid-compatible handset models that manufacturers offer? In this regard, the Commission notes that handset manufacturers are required to indicate on their websites the ANSI standard under which a handset model is certified. Does this website posting requirement eliminate the need to file FCC Form 655 because of grandfathered handset models? Further, can the Commission gather relevant handset model information from equipment authorization reports instead of from FCC Form 655?

128. Finally, if the Commission maintains the FCC Form 655 filing requirement for handset manufacturers after the end of the manufacturer transition period, are there any changes that the Commission should make to this form in regards to the information that the form collects? Further, are the any changes that the Commission should make to FCC Form 855 in regards to the information that this form collects either in terms of service providers or if it moves handset manufacturers to this form, too?

3. Reliance on Accessibility Clearinghouse

129. The Commission proposes to decline the HAC Task Force's recommendation that the Commission permit service providers to rely on the information linked to in the Commission's Accessibility Clearinghouse as a legal safe harbor when making a determination of whether a handset model is hearing aid compatible for purposes of meeting applicable benchmarks.

130. The HAC Task Force's Final Report recommends that service providers should be able to rely on the information reported in the Global Accessibility Reporting Initiative (GARI) database, which is linked at the Accessibility Clearinghouse website. The Report asserts that the GARI database would provide a more up-to-date snapshot of hearing aid-compatible handset models than the annual FCC Form 655 report that manufacturers file. Presently, the Commission allows service providers to rely on the information from a handset manufacturer's FCC Form 655 as a safe harbor. In its Public Notice, WTB sought comment on the HAC Task Force's recommendation. MWF commented that its GARI website had ''gained global recognition'' and that the database ''is kept up to date with the available devices in the marketplace.'' MWF also noted that for the GARI website, ''all manufacturer statements'' are ''subject to the legal requirements for accuracy of representations to consumers.'' The HAC Task Force, in its reply, argued that being able to rely on the GARI database ''will provide a user-friendly experience for service providers to receive timely information, compared to the Form 655 reports and Equipment Authorization System.''

131. While handset manufacturers must certify to the accuracy of their FCC Form 655 reports, there is no similar requirement with respect to the information handset manufacturers submit to the GARI database. The GARI database is not a Commission-maintained database, and the Commission does not control who can access the database and what information is added to the database. The Commission has no means of ensuring that the information in the GARI database is accurate, timely, or complete. Further, the Commission already allows service providers to rely on the information from a handset manufacturer's FCC Form 655 as a safe harbor, and it is not convinced that it is necessary to allow service providers a second safe harbor that may not contain accurate information.

132. Accordingly, the Commission proposes to decline the Task Force's recommendation that would allow a service provider to rely on the information linked to in the Commission's Accessibility Clearinghouse to determine whether a handset model is hearing aid compatible for the purpose of meeting applicable benchmarks. The Commission seeks comment on its proposed determination. The Commission also seeks comment on whether, once the transition to 100% hearing aid compatibility is completed, its rules should continue to require service providers to either link to the GARI database on their publicly accessible websites or provide a list for the past 24 months of hearing aid-compatible handset models that they no longer offer.

133. The Commission also proposes to decline the Task Force's recommendation that, if a handset model is not in the GARI database, the Commission ''automatically and immediately upload'' handset manufacturers' FCC Form 655 reports to the Accessibility Clearinghouse after they are submitted to the Commission. The Commission already posts these reports on the Commission's wireless hearing aid compatibility website and links to that website on the Accessibility Clearinghouse website. The Commission seeks comment on its proposed determinations.

4. Contact Information for Consumers

134. The Commission tentatively concludes that it should modify its website posting requirements to require handset manufacturers and service providers to include on their publicly accessible websites a point-of-contact for consumers to use in order to resolve questions they have about a company's hearing aid-compatible handset models. Under its tentative conclusion, handset manufacturers and service providers would provide the name of a

department or a division that is staffed with knowledgeable employees and provide an email address, mailing address, and a toll free number that consumers could contact in order to find out information about a hearing aid-compatible handset model that the company offers or to ask questions about how a particular handset model links to the consumer's hearing device. The Commission would expect manufacturers and service providers to be responsive to consumer questions and interact with consumers asking questions about hearing aid-compatible handset models in a manner consistent with the Consumer Code for Wireless Service that can be found on CTIA's website.

135. Section 710(a) of the Act requires the Commission to ''establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing.'' The Commission seeks comment on whether requiring handset manufacturers and service providers to post contact information on their publicly accessible websites is necessary in order to ensure that consumers with hearing loss have reasonable access to telephone service. The Commission believes such a requirement might be beneficial to consumers in terms of getting their questions answered and may help handset manufacturers and service providers sell new handsets and services. Further, by requiring the contact information to be provided on publicly accessible websites, the information can be easily updated and is readily accessible to the public; a provider's website is also a place the public reasonably expects to find contact information for these types of inquiries. The Commission's website posting rules require websites to be updated within 30 days of a change.

136. The Commission seeks comment on its tentative conclusion that handset manufacturers and service providers should be required to include contact information on their publicly accessible websites that consumers can use regarding questions that they might have on a company's hearing aid-compatible handset models. How can the Commission ensure that handset manufacturers and service providers display contact information in a uniform fashion and in a uniform location on their websites? Should the Commission require that this information be provided on the first page of their hearing aid compatibility web pages and in a particular location on this page, such as the upper right-hand corner? Should the Commission require that this information be labeled as HAC Contact Information or something similar? How can the Commission ensure that consumers can easily find the required contact information, and should the Commission require additional information to be provided beyond what it is proposing?

137. The Commission also seeks comment on whether to require handset manufacturers and service providers both to provide this contact information on their publicly accessible websites, and also to provide this contact information in their FCC Form 655 and 855 filings. Under this alternative, the Commission would modify these forms to provide a space where this contact information would be provided. These forms contain certification requirements to ensure the accuracy of the information that is provided; however, the forms are only due once a year and are not required to be updated within 30 days of a change as the Commission's website posting rule requires. Further, consumers might not be aware of these forms or where to access them but are likely familiar with company websites and understand how to access them. Moreover, consumers would expect to find this type of contact information on a company website.

138. Alternatively, the Commission seeks comment on whether it should require handset manufacturers and service providers to enter the required contact information in a Commission-maintained database. Under this approach, the Commission would create a database that would contain company point-of-contact information for consumers who have hearing aid compatibility questions related to a company's hearing aid-compatible handset models that they offer. Companies would be required to enter their contact information for hearing aid compatibility questions directly into the database and to update their contact information within 30 days of any changes. This database would operate similarly to the Commission's Recordkeeping Compliance Certification and Contact Information Registry. This database could be used to search for a company's representatives who are knowledgeable about the company's hearing aid-compatible handset models that they offer and could answer consumer questions related to these models.

139. Commenters supporting or opposing the above approaches should explain why these proposals are consistent or inconsistent with statutory requirements. In addition, commenters should explain why these proposals are or are not in the public interest and what the costs and benefits of each of these proposals are. Is the Commission's website posting approach more beneficial to consumers in terms of getting questions answered and to companies in terms of selling new handsets and services then the other approaches outlined above? Are consumers familiar with FCC Form 655 and 855 filings, and do they know where to find these filings and how to access them? From a consumer's perspective is it necessary for consumers to be able to find this contact information on the certification forms or is being able to locate it on a company's website sufficient? Is the website posting approach more consumer friendly than adding the contact information to FCC Forms 655 and 855 or the database approach? If the Commission adopts a database approach, how would consumers know about the database or where to find it? Are consumers more likely to go to a company's website before exploring other options? Further, is there an existing Commission database that is accessible to consumers that the Commission could utilize for purposes of requiring handset manufacturers and service providers to list customer service contact information?

140. Finally, the Commission proposes to delete the last sentence of § 20.19(j) which provides that for state enforcement purposes the procedures set forth in part 68, subpart E of the Commission's rules should be followed. The rules in part 68, subpart E relate to sections 255, 716, and 718 of the Communications Act rather than section 610 and the Commission, therefore, proposes to delete this sentence.

H. Sunsetting the De Minimis Exception

141. In view of its tentative conclusion to require 100% of handset models to be hearing aid compatible after the expiration of the relevant transition periods, the Commission tentatively concludes that it should remove the *de minimis* exception in § 20.19(e) of the Commission's rules. Under this tentative conclusion, once the applicable transition periods expire handset manufacturers and service providers will no longer be able to claim *de minimis* status.

142. Section 20.19(e) provides a *de minimis* exception to hearing aid compatibility obligations for those manufacturers and mobile service providers that only offer a small number of handset models. Specifically, section 20.19(e)(1) provides that manufacturers and service providers offering two handset models or fewer in the United States over an air interface are exempt

from the requirements of § 20.19, other than the reporting requirement. Section 20.19(e)(2) provides that manufacturers or service providers that offer three handset models over an air interface must offer at least one compliant model. Section 20.19(e)(3) provides that manufacturers or service providers that offer four or five handset models in an air interface must offer at least two handset models that are hearing aid compatible in that air interface.

143. The Commission first adopted the *de minimis* rule together with the initial wireless hearing aid compatibility requirements in 2003, based on its recognition that the hearing aid compatibility requirements could have a disproportionate impact on small manufacturers or those that sell only a small number of digital wireless handset models in the United States, as well as on service providers that offer only a small number of digital wireless handset models. In the *2005 HAC Order,* the Commission clarified that the *de minimis* rule applies on a per air interface basis, rather than across a manufacturer's or service provider's entire product line. In 2010, the Commission modified the *de minimis* exception as applied to companies that are not small entities by deciding that, beginning two years after it offers its first handset model over an air interface, a manufacturer or service provider that is not a small entity, must offer at least one model that is hearing aid compatible.

144. The Commission seeks comment on its tentative conclusion to remove the *de minimis* exception to its hearing aid compatibility rules. Maintaining a *de minimis* exception that would permit a manufacturer to certify less than 100% of its handset models as hearing aid compatible or would allow a service provider to maintain a handset portfolio that is less than 100% composed of hearing aid-compatible handset models would be inconsistent with the Commission's objective of developing a 100% compliance standard. While the *de minimis* exception served an important purpose when it was implemented two decades ago, today manufacturers and service providers are able to offer more easily a range of hearing aid-compatible handset models using a variety of technologies including Bluetooth. Considering the developments in hearing aid compatibility technologies, and the greater availability of hearing aid-compatible handset models, the Commission seeks comment on whether maintaining the *de minimis* exception is necessary. Are there reasons why smaller manufacturers cannot certify all of their handset models as hearing aid compatible or why smaller manufacturers or wireless providers cannot ensure that all of the handset models that they offer are hearing aid compatible? Do commenters believe that maintaining a *de minimis* exception would still be necessary to preserve competitive opportunities for small entities?

I. 90-Day Shot Clock for Waivers

145. The HAC Task Force's Final Report recommends that the Commission set a 90-day shot clock for the resolution of petitions for waiver of the hearing aid-compatibility requirements, which would include a public notice comment cycle. In the Public Notice on the Task Force's recommendations, WTB sought comment on this proposal. In its reply comments, the Task Force reiterated its recommendation. No other commenters addressed this issue.

146. The Commission proposes to decline the Task Force's recommendation because it does not anticipate that establishing a shot clock would be necessary to ensure the timely resolution of potential future requests for waiver of the hearing aid compatibility rules or to ensure that the deployment of new technologies is not delayed. In addition, given the highly technical nature of the questions that arise in the hearing aid-compatibility proceedings, establishing a 90-day shot clock could limit public participation and negatively impact staff's ability to work with affected stakeholders to develop consensus solutions that serve the interest of consumers with hearing loss. The Commission notes that not only is the 90-day proposal half of what it sought comment on, but that the Commission also sought comment on whether there are situations in which it should have the ability to extend the waiver deadline. The Commission also notes that section 710(f) requires the Commission to periodically review the regulations established pursuant to the Hearing Aid Compatibility Act. This statutory obligation should curtail the need for waivers. The Commission seeks comment on its proposed determination.

J. Renaming Section 20.19

147. Finally, the Commission seeks comment on whether it should revise the heading of § 20.19 of its rules to better reflect the scope of its requirements. Section 20.19 is currently titled ''Hearing aid-compatible mobile handsets.'' The rules, however, are intended to help ensure access to communications services for consumers who use hearing aids as well as other types of hearing devices such as cochlear implants and telecoils as well as consumers who have hearing loss but do not use hearing devices. The Commission seeks comment on whether it should revise the heading of § 20.19 to better reflect the scope of the requirements. If so, the Commission seeks comment on what heading the it should adopt. For example, should the Commission rename § 20.19 to ''Accessibility for Consumers with Hearing Loss'' or ''Hearing Loss Interoperability Requirements?'' Are there alternative headings the Commission should consider? Would revising the section heading create consumer confusion or provide needed clarity?

K. Promoting Digital Equity and Inclusion

148. To the extent not already addressed, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its inquiries may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

149. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). All filings related to this document shall refer to WT Docket No. 23–388.

IV. Initial Regulatory Flexibility Analysis

150. As required by the Regulatory Flexibility Act of 1980, as amended, (RFA), the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested

on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

151. The Commission's hearing aid compatibility rules ensure that the millions of Americans with hearing loss will have access to the same types of technologically advanced telephone handsets as those without hearing loss. Both manufacturers and service providers, some of which are small entities, are required to make available handsets that meet specified technical criteria for hearing aid compatibility. The Commission issued the *NPRM* to develop a record relating to a proposal submitted by the Hearing Aid Compatibility (HAC) Task Force on how the Commission can achieve its goal of requiring 100% of handsets offered by handset manufacturers and service providers to be certified as hearing aid compatible.

152. The *NPRM* tentatively concludes that requiring 100% of all handsets to be certified as hearing aid compatible is an achievable objective under the factors set forth in section 710(e) of the Communications Act. As part of this determination, the *NPRM* seeks comment on adopting the more flexible ''forward-looking'' definition of hearing aid compatibility that the HAC Task Force recommends. This determination also includes a proposal to broaden the current definition of hearing aid compatibility to include Bluetooth connectivity technology and to require at least 15% of offered handset models to connect to hearing aids through Bluetooth technology as an alternative to or in addition to a telecoil. The *NPRM* seeks comment on the Bluetooth technology the Commission should utilize to meet this requirement and how to incorporate this requirement into the wireless hearing aid compatibility rules. Additionally, the *NPRM* proposes a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers to transition to a 100% hearing aid-compatible handset standard for all handset models offered for sale in the United States or imported for use in the United States. The *NPRM* also seeks comment on certain implementation proposals and updates to the wireless hearing aid compatibility rules related to these proposals.

B. Legal Basis

153. The proposed action is authorized pursuant to sections 1–4 and 641–646 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 641–646.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

154. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The 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.

155. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission 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.

156. 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.

157. 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, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

158. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

159. *Part 15 Handset Manufacturers.* Neither the Commission nor the SBA have developed a small business size standard specifically applicable to unlicensed communications handset manufacturers. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing is the closest industry with a SBA small business size standard. The Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing industry is comprised of establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are:

transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA small business size standard for this industry classifies firms having 1,250 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year. Of this number, 624 firms had fewer than 250 employees. Thus, under the SBA size standard the majority of firms in this industry can be considered small.

160. *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.

161. *Wireless Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Wireless Resellers. The closest industry with a SBA small business size standard is Telecommunications Resellers. 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 and they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA size standard for this industry, a business is 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 during that year. Of that number, 1,375 firms operated with fewer than 250 employees. Thus, for this industry under the SBA small business size standard, the majority of providers can be considered small entities.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

162. The Commission expects potential rule changes proposed in the *NPRM,* if adopted, could impose some new reporting, recordkeeping, or other compliance requirements on some small entities. If the proposals in the *NPRM* are adopted, small and other manufacturers and service providers would be required to certify that 100% of handsets offered are hearing aid compatible. Small and other manufacturers' and service providers' handset portfolios would be allowed to meet this 100% requirement, with grandfathered handsets, or in the alternative, could be required to have 100% of handsets meet aspects of the 2019 ANSI Standard. Additionally, small and other manufacturers' and service providers' could be subject to a compliance requirement that 85% of these handsets must meet the 2019 ANSI standard's telecoil coupling requirements and the remaining 15% of these handsets meet a new Bluetooth connectivity requirement as a replacement for meeting the standard's telecoil requirements.

163. If adopted, the transition period for compliance would allow a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers, which are typically small entities, to transition to a 100% hearing aid-compatible handset standard for all handset models offered for sale in the United States or imported for use in the United States.

164. In addition, small and other handset manufacturers could be subject to compliance requirements should certain implementation proposals and updates to the wireless hearing aid compatibility rules be adopted. For example, a revision to the package labeling provisions in section 20.19(f)(1) of the Commission's rules could require handset manufacturers to have the handset package label state whether the handset has a telecoil that meets certification requirements or instead includes Bluetooth connectivity as a replacement for meeting telecoil certification requirements. Also, if a corresponding change to the package insert and handset manual requirements in section 20.19(f)(2) is adopted, manufacturers could be required to provide information in a package insert or user manual about whether a handset meets telecoil certification requirements or replaces this requirement with Bluetooth coupling ability.

165. If the proposed rules are adopted small and other handset manufacturers and service providers would be required to identify on their publicly accessible websites which handsets in their handset portfolios meet telecoil certification requirements. For those handsets that do not meet telecoil certification requirements, handset manufacturers and service providers would be required to identify which Bluetooth connectivity standards these handsets include. Handset manufacturers and service providers would also be required to identify on their publicly accessible websites the conversational gain with and without hearing aids for each handset that they offer regardless of whether the handset meets telecoil certification standards or includes Bluetooth connectivity instead.

166. Additionally, after the expiration of the manufacturer transition period, all handsets would be required by default to have their acoustic and volume control functions on. Handsets would also be allowed to I have a secondary mode whereby the handset's telecoil is turned on or, for those handsets that substitute Bluetooth connectivity for telecoil connectivity, the Bluetooth function is turned on. In addition, proposed modifications of the handset package insert and user manual requirements could require an included explanation of each of these modes, what each mode does and does not include, and how to turn these settings on and off. In view of the proposal to require 100% of handsets to be hearing aid compatible, should it be adopted, the *de minimis* exception in section 20.19(e) of the rules would be removed.

167. Small entities may be required to hire attorneys, engineers, consultants, or other professionals to comply with the rule changes proposed in the *NPRM,* if adopted. The Commission does not believe, however, that the costs and/or administrative burdens associated with any of the proposal rule changes will unduly burden small entities. While the Commission cannot quantify the cost of compliance with the potential rule changes and compliance obligations raised in the *NPRM,* in its discussion of the proposals the Commission has requested comments from the parties in

the proceeding including cost and benefit analyses which may help the Commission identify and evaluate relevant matters for small entities, such as compliance costs and burdens that may result from the proposed rules and the matters on which the Commission has requested comments.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

168. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) exemption from coverage of the rule, or any part thereof, for such small entities.''

169. In the *NPRM,* the Commission considers specific steps it could take and alternatives to the proposed rules that could minimize potential economic impact on small entities that might be affected by the proposed rule changes, as well as any other rule changes that may be required as a result of comments provided by interested parties. The Commission proposes a 24-month transition period for handset manufacturers; a 30-month transition period for nationwide service providers; and a 42-month transition period for non-nationwide service providers, which are typically small entities, to transition to a 100% hearing aid-compatible handset standard for all handset models offered for sale in the United States or imported for use in the United States. The proposed transition periods would minimize some economic impact for small manufacturers and service providers since they would not have to immediately comply with the revised standard in the short term. In particular, the 42-month transition period would be particularly beneficial for non-nationwide providers, which are usually small entities. The Commission seeks comment on whether the proposed transition periods are reasonable timeframes to allow implementation of the 100% compliance standard. Alternatively, the Commission considered using the longer transition periods recommended by the HAC Task Force; however, the proposal in the *NPRM* is both more in keeping with previous transition periods the Commission has utilized for new technical standards and serves the needs of consumers with hearing loss as soon as possible without negatively impacting product development cycles for manufacturers and service providers.

170. To limit any potential burdens regarding the impact of the proposed transition to a 100% compliance standard on previously manufactured wireless handsets, the Commission proposes to allow manufacturers and service providers to continue to offer handsets that are already certified as hearing aid compatible as part of their hearing aid-compatible handset portfolio. Under this proposal, handsets would be grandfathered and manufacturers and service providers can include these handsets in their 100% handset portfolios as long as the handsets are still being offered. This grandfathering proposal could minimize the burdens associated with implementing the new standard for small entities because they would not have to recertify previously approved handsets. In developing the proposal, the Commission considered discontinuing its grandfathering rule, in which case 100% of the handset models in a manufacturer's or service provider's handset portfolio would have to be certified as hearing aid-compatible using the 2019 ANSI Standard's requirements, as modified by a possible telecoil and Bluetooth connectivity split. The *NPRM* seeks comment from small and other entities on the economic impact of adopting such an approach.

171. To reduce potential reporting burdens, the Commission seeks comment on whether to eliminate website and record retention requirements that may no longer be necessary if it adopts a 100% compliance standard. Specifically, the Commission seeks comment on whether to eliminate the requirement that service providers and manufacturers post or retain information about non hearing aid-compatible handsets. Additionally, the Commission proposes to eliminate the annual service reporting requirements for manufacturers if the Commission adopts a 100% compliance standard. Alternatively, the Commission considered approaches that would retain website and record retention requirements as well as annual service reporting requirements, but believes the proposed approach would better serve the needs of small entities for the reasons stated above.

172. The Commission seeks to balance the potential economic impact and burdens that small entity manufacturers and service providers might face in light of the 100% compliance requirement with the need to ensure that Americans with hearing loss can access a wide array of handsets with emerging technologies. Therefore the *NPRM* seeks comment on alternative obligations, timing for implementation, and other measures including costs and benefits analyses that will allow the Commission to more fully consider and evaluate the economic impact on small entities. The Commission will review the comments filed in response to the *NPRM* and carefully consider these matters as it relates to small entities before adopting final rules in this proceeding.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

173. None.

V. Ordering Clauses

174. Accordingly, *it is ordered* that, pursuant to sections 1–4 and 641–646 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 641–646, this Notice of Proposed Rulemaking *is adopted*.

175. *It is further ordered* that WT Docket No. 15–285 *is hereby terminated*.

176. *It is further ordered* that the Commission's Office of the Secretary, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Incorporation by reference, Individuals with disabilities, Telecommunications, Telephones.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE SERVICES

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

Authority: 47 U.S.C. 151, 152(a), 154(i), 155, 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, and 615c, unless otherwise noted.

■ 2. Amend § 20.19 by:

■ a. Revising paragraphs (b)(1) through (3), (c) introductory text, (c)(1) through (3);
■ b. Removing paragraph (e);
■ c. Redesignating paragraphs (f) through (l) as paragraphs (e) through (k);
■ d. Revising newly redesignated paragraphs (e) introductory text, (e)(1), and (e)(2) introductory text;
■ e. Adding paragraph (e)(2)(ix) to newly redesignated paragraph (e);
■ f. Revising newly redesignated paragraph (g)(1);
■ g. Adding paragraphs (h)(1)(i) and (ii) to newly redesignated paragraph (h); and
■ h. Revising newly redesignated paragraphs (h)(2) introductory text, and (h)(2)(iv) through (vi).

The revisions and additions read as follows:

§ 20.19 Hearing aid-compatible mobile handsets.

* * * * *

(b) * * *

(1) *Handset model compatibility on or after December 31, 2026.* In order to satisfy a manufacturer or service provider's obligations under paragraph (c) of this section, a handset model submitted for equipment certification or for a permissive change relating to hearing aid compatibility on or after December 31, 2026 must meet:

(i) The 2019 ANSI standard's acoustic coupling requirements;

(ii) The 2019 ANSI standard's volume control requirements; and

(iii) Either the 2019 ANSI standard's telecoil coupling requirements or have Bluetooth connectivity technology as a replacement for or in addition to meeting the standard's telecoil coupling requirements.

(iv) All such new handset models must by default have their acoustic and volume control functions on. Such handset models may also have a secondary mode whereby the handset model's telecoil is turned on or, for those handset models that substitute Bluetooth connectivity for telecoil connectivity, the Bluetooth function is turned on.

(2) *Handset model compatibility before December 31, 2026.* In order to satisfy a manufacturer's or service provider's obligations under paragraph (c) of this section, a handset model submitted for equipment certification or for a permissive change relating to hearing aid compatibility before December 31, 2026 must meet either:

(i) The 2019 ANSI standard; or

(ii) The 2019 ANSI standard's acoustic coupling requirements, applicable volume control requirements, and either the standard's telecoil coupling requirements or have Bluetooth connectivity technology as a replacement for or in addition to meeting the standard's telecoil coupling requirements.

(3) *Handset models operating over multiple frequency bands or air interfaces*

(i) Beginning on December 31, 2026, a handset model is hearing aid-compatible if it meets the requirements of paragraph (b)(1) of this section for all frequency bands that are specified in the 2019 ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset model has been certified as compliant with the test requirements for the 2019 ANSI standard pursuant to § 2.1033(d) of this chapter.

(ii) Before December 31, 2026, a handset model is hearing aid-compatible if it meets the requirements of paragraph (b)(2) of this section for all frequency bands that are specified in the 2019 ANSI standard and all air interfaces over which it operates on those frequency bands, and the handset model has been certified as compliant with the test requirements for the 2019 ANSI standard pursuant to § 2.1033(d) of this chapter.

* * * * *

(c) *Phase-in of hearing aid-compatibility requirements.* The following applies to each manufacturer and service provider that offers handset models used to deliver digital mobile services as specified in paragraph (a) of this section.

(1) *Manufacturers—Number of hearing aid-compatible handset models offered.* After December 31, 2026, for each digital air interface for which it offers handset models in the United States or imported for use in the United States, one-hundred (100) percent of the handset models that the manufacturer offers must be certified as hearing aid-compatible.

(i) At least eighty-five (85) percent of those handset models must meet the 2019 ANSI standard's telecoil coupling requirements or have been certified as meeting the T3 telecoil rating under a previous ANSI standard; and

(ii) At least fifteen (15) percent of those handset models must have Bluetooth connectivity technology as a replacement for or in addition to meeting the 2019 ANSI standard's telecoil coupling requirements or the T3 telecoil rating under a previous ANSI standard.

(2) *Tier I carriers.* After June 30, 2027, for each digital air interface for which it offers handset models to customers, one-hundred (100) percent of the handset models that the provider offers must be certified as hearing aid-compatible.

(i) At least eighty-five (85) percent of those handset models must meet the 2019 ANSI standard's telecoil coupling requirements or have been certified as meeting the T3 telecoil rating under a previous ANSI standard; and

(ii) At least fifteen (15) percent of those handset models must have Bluetooth connectivity technology as a replacement for or in addition to meeting the 2019 ANSI standard's telecoil coupling requirements or the T3 telecoil rating under a previous ANSI standard.

(3) *Service providers other than Tier I carriers.* After *June 30, 2028,* for each digital air interface for which it offers handset models to customers, one-hundred (100) percent of the handset models that the provider offers must be certified as hearing aid-compatible.

(i) At least eighty-five (85) percent of those handset models must meet the 2019 ANSI standard's telecoil coupling requirements or have been certified as meeting the T3 telecoil rating under a previous ANSI standard; and

(ii) At least fifteen (15) percent of those handset models must have Bluetooth connectivity technology as a replacement for or in addition to meeting the 2019 ANSI standard's telecoil coupling requirements or the T3 telecoil rating under a previous ANSI standard.

* * * * *

(e) *Labeling and disclosure requirements for hearing aid-compatible handset models.*

(1) *Package label.* For all handset models certified to be hearing aid-compatible, manufacturers and service providers shall ensure that the handset model's package label states that the handset model is hearing aid-compatible and the handset model's actual conversational gain with and without a hearing aid if certified using a technical standard with volume control requirements. The actual conversational gain displayed for use with a hearing aid shall be the lowest rating assigned to the handset model for any covered air interface or frequency band. The label shall also state whether the handset model has a telecoil that meets certification requirements, includes Bluetooth connectivity as a replacement for meeting telecoil certification requirements, or includes both.

(2) *Package insert or handset manual.* For all handset models certified to be hearing aid-compatible, manufacturers and service providers shall disclose to

consumers through the use of digital labeling (*e.g.,* a QR Code) on the handset model's package label, or through the use of a package insert, or in the handset model's user manual:

* * * * *

(ix) Where applicable, an explanation that the handset model does not meet telecoil certification requirements and instead couples with hearing aids using a Bluetooth connectivity standard and provide the name of that Bluetooth standard. This explanation should also indicate that the handset model will, by default, have its acoustic and volume control functions on and that it may also have a secondary mode whereby the handset model's telecoil is turned on or, for those handset models that substitute Bluetooth connectivity for telecoil connectivity, the Bluetooth function is turned on. The explanation must include an explanation of each of these modes, what each mode does and does not include, and how to turn these settings on and off.

* * * * *

(g) * * *

(1) Each manufacturer and service provider that operates a publicly-accessible website must make available on its website:

(i) A list of all hearing aid-compatible models currently offered, the ANSI standard used to evaluate hearing aid compatibility, the ratings of those models under the relevant ANSI standard, if applicable, and an explanation of the rating system. Each service provider must also include on its website: A list of all non-hearing aid-compatible models currently offered, as well as a link to the current FCC web page containing information about the wireless hearing aid compatibility rules and service provider's obligations. Each service provider must also include the marketing model name/number(s) and FCC ID number of each hearing aid-compatible and non-hearing aid-compatible model currently offered.

(ii) In addition, each manufacturer and service provider must identify on their publicly accessible websites, for all handset models in their handset portfolios that are certified as hearing aid compatible under (b) of this section, which of those handset models meet telecoil certification requirements and which have Bluetooth connectivity technology. For those handset models that do not meet telecoil certification requirements, each manufacturer and service provider must affirmatively state that the handset model does not meet the telecoil certification requirements. For handset models that have Bluetooth connectivity technology as a replacement to or in addition to telecoil, manufacturers and service providers must identify which Bluetooth connectivity standards these handset models include.

(iii) Each handset manufacturer and service provider must identify on their publicly accessible websites the conversational gain with and without hearing aids for each handset model certified as hearing aid compatible that they offer regardless of whether the handset model meets telecoil certification standards or includes Bluetooth connectivity instead.

(iv) Each handset manufacturer and service provider must include on its website a point-of-contact for consumers to use in order to resolve questions they have about a company's hearing aid-compatible handset models. Handset manufacturers and service providers must provide the name of a department or a division that is staffed with knowledgeable employees and provide an email address, mailing address, and a toll free number that consumers could contact to find out information about a hearing aid-compatible handset model that the company offers or to ask questions about how a particular handset model couples with the consumer's hearing device.

* * * * *

(h) * * *

(1) * * *

(i) On or after December 31, 2026, manufacturers and service providers shall submit Form 855 certifications on their compliance with the requirements of this section by January 31 of each year. Information in each certification and report must be up-to-date as of the last day of the calendar month preceding the due date of each certification and report.

(ii) Before December 31, 2026, service providers shall submit Form 855 certifications on their compliance with the requirements of this section by January 31 of each year. Manufacturers shall submit Form 655 reports on their compliance with the requirements of this section by July 31 of each year. Information in each certification and report must be up-to-date as of the last day of the calendar month preceding the due date of each certification and report.

(2) *Content of manufacturer and service provider certifications.* Certifications filed by service providers and manufacturers must include:

* * * * *

(iv) If the company is subject to paragraph (g) of this section, the website address of the page(s) containing the required information regarding handset models;

(v) The percentage of handset models offered that are hearing aid-compatible (companies will derive this percentage by determining the number of hearing aid-compatible handset models offered across all air interfaces during the year divided by the total number of handset models offered during the year); and

(vi) The following language:

I am a knowledgeable executive [of company x] regarding compliance with the Federal Communications Commission's wireless hearing aid compatibility requirements as a company covered by those requirements.

I certify that the company was [(in full compliance/not in full compliance)] [choose one] at all times during the applicable time period with the Commission's wireless hearing aid compatibility handset model deployment benchmarks and all other relevant wireless hearing aid compatibility requirements.

The company represents and warrants, and I certify by this declaration under penalty of perjury pursuant to 47 CFR 1.16 that the above certification is consistent with 47 CFR 1.17, which requires truthful and accurate statements to the Commission. The company also acknowledges that false statements and misrepresentations to the Commission are punishable under Title 18 of the U.S. Code and may subject it to enforcement action pursuant to Sections 501 and 503 of the Act.

* * * * *

[FR Doc. 2024–00414 Filed 1–25–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 02–278, 21–402; FCC 23–107; FR ID 194251]

Targeting and Eliminating Unlawful Text Messages; Implementation of the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on several issues. First, the Commission proposes a text blocking requirement following Commission notification and seeks comment on other options for requiring providers to block unwanted or illegal texts. Second, the Commission seeks

further comment on text message authentication, including the status of any industry standards in development. Finally, the Commission proposes to require providers to make email-to-text services opt in.

DATES: Comments are due on or before February 26, 2024 and reply comments are due on or before March 11, 2024.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 02–278 and 21–402, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (OMD 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy*. In the event that the Commission announces the lifting of COVID–19 restrictions, a filing window will be opened at the Commission's office located at 9050 Junction Drive, Annapolis, MD 20701.

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice).

FOR FURTHER INFORMATION CONTACT: Jerusha Burnett of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at *jerusha.burnett@fcc.gov,* 202 418–0526 or Mika Savir of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at *mika.savir@fcc.gov* or (202) 418–0384.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (*Second FNPRM*), in CG Docket Nos. 02–278 and 21–402; FCC 23–107, adopted on December 13, 2023, and released on December 18, 2023. The full text of this document is available online at *https://docs.fcc.gov/public/attachments/FCC-23-107A1.pdf*.

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200 through 1.1216. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

The *Second FNPRM* may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how to further reduce the information collection burden for small business concerns with fewer than 25 employees.

Providing Accountability Through Transparency Act

The Providing Accountability Through Transparency Act, Public Law 118–9, requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. The required summary of the *Second NPRM* is available at *https://www.fcc.gov/proposed-rulemakings*.

Synopsis

1. *Text Blocking.* The Commission proposes and seeks comment on additional text blocking options to better protect consumers from illegal texts. Specifically, the Commission proposes and seeks comment on extending the text blocking requirement to include originating providers, and to require all immediate downstream providers to block the texts from providers that fail to block after Commission notification. The Commission also seeks additional comment on whether to require this blocking to be based on number, source, the substantially similar traffic standard, or some other standard. Next the Commission seeks comment on requiring providers to block texts based on content-neutral reasonable analytics. Third, the Commission seeks comment on traceback for text messaging, including whether to adopt a traceback response requirement for text messaging. Fourth, the Commission seeks comment on any other rules to effectively protect consumers from illegal texts. Finally, the Commission seeks comment on any additional protections that may be necessary in case of erroneous blocking.

2. *Expanding the Mandatory Text Blocking Requirement to Originating Providers and Adding a Downstream Provider Blocking Requirement.* The Commission proposes and seeks comment on extending the requirement to block following Commission notification of illegal texts to other providers generally, and originating providers specifically. The Commission believes that originating providers are similar to gateway or originating voice service providers in that they are the first U.S.-based provider in the text path and that applying an analogous rule to originating providers could help ensure that these providers are properly incentivized to stop illegal texts even before the Commission sends any notice. The Commission seeks comment on this view.

3. The Commission seeks comment on whether and, if so, how to define originating providers here. Is the originating provider the first provider in the text path, and therefore in a similar position to a gateway or originating voice service provider? Are there other providers in the path that are more similar to a gateway provider? Alternatively, should the Commission apply these rules to some other entity in the chain to better protect consumers? The call blocking rules help hold bad-actor voice service providers responsible for the calls they allow onto the network by denying those voice service providers access to the network entirely when they have demonstrated noncompliance. Is there a particular type of entity in the texting ecosystem that is more likely to either intentionally

or negligently shield those sending illegal texts?

4. The Commission proposes and seeks comment on requiring originating providers to block all texts from a particular source following Commission notification. Is this an appropriate standard for blocking? How might originating providers determine the source of a particular text or texts in order to comply with this rule? Alternatively, should the Commission require blocking based on the number or numbers, as the Commission does for terminating providers? If so, how effective is such a requirement? If not, should the Commission also change the standard for terminating providers to match the standard for originating providers, or do originating providers have access to more information, making a broader requirement to block based on source appropriate?

5. Should the Commission limit the length of time for which blocking is required? If so, how long should the Commission require providers to block? Alternatively, should the Commission require originating and/or terminating providers to block using the substantially similar standard applied in the call blocking rules? The Commission believes that texting may present concerns unique from calling that justify a different standard, or require additional guidance for compliance. For example, while a voice service provider will not have the content of a particular call prior to that call reaching the recipient, a texting provider likely does have access to this information. Given that, should the Commission require that blocking be content as well as competitively neutral? Are there any other standards the Commission should consider?

6. The Commission seek comment on whether the process for voice service providers should be applied here to texting. The current rules for call blocking lay out a detailed process that must be followed before requiring all immediate downstream providers to block all of an identified voice service provider's traffic. Is this process appropriate for the texting environment, or are there differences between texting and calling that justify modifications? Several commenters expressed concerns about the delays inherent in this process. While the process works well for calling, delays may have different consequences in the texting context. Is a delay particularly significant when dealing with texts compared to calls? Why or why not? If so, are there changes the Commission could make to address this issue while still ensuring that providers are afforded sufficient due process? For example, should the Commission, as is done in the calling context, allow 14 days for the originating provider to investigate and respond following the Notification of Suspected Illegal Texts or should it change that time frame? Should the Commission establish a different docket for text blocking Orders, or use the same docket used for call blocking?

7. *Requiring Blocking of Texts Based on Reasonable Analytics.* The Commission seeks comment on requiring or incentivizing providers to block texts based on reasonable analytics. The call blocking rules provide a safe harbor for the blocking of unwanted calls based on reasonable analytics on an opt-out basis. In addition, the call blocking rules provide a safe harbor for the blocking of calls without consumers' consent and calls that are highly likely to be illegal based on reasonable analytics. In both cases, the Commission requires that analytics are applied in a non-discriminatory, competitively neutral manner. The Commission also recently sought comment on requiring terminating voice service providers to offer opt-out blocking services for calls that are highly likely to be illegal. The Commission has not yet addressed text blocking based on reasonable analytics.

8. The Commission seeks comment on whether and how to define reasonable analytics for this purpose. The record indicates that many providers already make use of analytics or other techniques to block illegal texts. What analytics do providers use to identify unwanted or illegal texts? If providers are reluctant to share specifics to avoid tipping off bad actors, the Commission seeks comment on broad criteria that providers may use. For example, a call-blocking program might block calls based on a combination of factors, such as: large bursts of calls in a short timeframe, low average call duration, low call completion ratios, invalid numbers placing a large volume of calls.

9. The Commission seeks comment on whether, and to what extent, providers use volumetric triggers to identify bad traffic. Do any of the call-blocking reasonable analytics factors apply to text and, if so, which ones? Are there other content-neutral factors that are more likely to indicate that a text is illegal that do not apply in the calling context? If the Commission adopts such a rule, are there any necessary modifications the Commission should make to accommodate small businesses? As noted above, the content of a text is available to the provider at the time that blocking occurs, which is not generally true for calls. If the Commission requires providers to block based on reasonable analytics, should the Commission require that these analytics be content-neutral? Should the Commission also require that the blocking be non-discriminatory and competitively neutral? Alternatively, are there ways the Commission could encourage this blocking without requiring it? Are there any other issues the Commission should consider?

10. Because texting is currently classified as an information service, the Commission does not believe that providers need safe harbor protections to engage in this type of blocking. The Commission seeks comment on this belief. Do providers risk liability when they block erroneously? If so, what can the Commission do to reduce that risk while still ensuring that wanted, lawful texts reach consumers?

11. *Alternative Approaches.* The Commission seeks comment on alternative blocking or mitigation rules the Commission could adopt to target unwanted and illegal texts and better protect consumers. Are there approaches the Commission has not considered here that would stop illegal texts and protect consumers? What can the Commission do to encourage or require providers to adopt these approaches? For example, can the Commission take steps to encourage information sharing between providers?

12. *Protections Against Erroneous Blocking.* If the Commission adopts additional text blocking requirements, should the Commission also adopt additional protections against erroneous text blocking? The rules already require providers to provide a point of contact for blocking issues. Considering that providers can and do block texts, is this sufficient, or are other protections necessary? If so, what protections should the Commission adopt? For example, should the Commission create a white list for ''legitimate research organizations and/or research campaigns'' or other entities, or would doing so raise legal or policy concerns? Similarly, should the Commission require some form of notification when texts are blocked, similar to the requirement when calls are blocked based on reasonable analytics? If so, how can providers send a notification, technically? Should the Commission require notification only to certain categories of blocking? Or, should the Commission require providers to give advance notice when a number is flagged as suspicious and may be blocked along with several other protections? Alternatively, should the Commission adopt the same protections already in place for erroneous blocking

of calls? What are the risks and benefits of each approach?

13. *Text Message Authentication.* The Commission seeks additional comment on text message authentication and spoofing. The Commission has so far declined to adopt authentication requirements for texting. The record thus far is mixed on the feasibility of such a requirement, with commenters noting that the STIR/SHAKEN caller ID authentication system is designed to work only on internet Protocol (IP) networks. Further, the record indicates that number spoofing is comparatively rare in SMS and MMS. The Commission believes it is important to continue to build a record on these issues and ensure awareness of any new developments or concerns. The Commission therefore seeks further comment on the need for and feasibility of text authentication. In particular, commenters should address whether number spoofing is an issue in text messaging and, if so, the extent of the problem. If number spoofing is uncommon, are there steps the Commission can take to ensure that it remains the exception rather than the rule? Do bad actors use other spoofing techniques, such as identity spoofing? If so, what can the Commission do to address this problem? Commenters should also discuss any new or in-process technical standards for authentication in text messaging, including their current status and any timelines for development. What issues will these new tools address? If the new technical standards are designed to prevent number spoofing, is this evidence of a more significant spoofing issue than commenters acknowledged in response to the *Second FNPRM?* If so, should the Commission act more quickly in this area, rather than waiting for the standards bodies to finish their work?

14. The Commission seeks comment on whether it should require industry to regularly provide updates with its progress on text authentication. The Commission believes doing so would ensure that the Commission has the most up-to-date information available without having to adopt further notices of proposed rulemaking covering this topic. Is this belief correct? If so, how often should the Commission require industry to provide updates and how should the Commission determine when further updates are no longer required? For example, should the Commission set a six-month cycle for updates over the next two years? Or should the Commission require some other update cycle and endpoint?

15. *Traceback.* Traceback has been a key part of the Commission's strategy for combating illegal calls. The Commission seeks comment on whether it should require a response to traceback requests for texting. The Commission seeks comment on requiring providers to respond to traceback requests from the Commission, civil or criminal law enforcement within 24 hours, consistent with the existing rule for gateway voice service providers and the recently adopted rule for all voice service providers that took effect on January 8, 2024, see 88 FR 43446–01 (July 10, 2023). Should the Commission also include the industry traceback consortium as an entity authorized to conduct traceback of texts, or is there some other entity that should be included? Is traceback for texting similar enough to traceback for calls for such a requirement to be effective? Are there any changes the Commission should make to the rule to ensure that traceback works for texts? How should the Commission handle aggregators and cloud platforms? Are there industry efforts that are already in operation, such as CTIA—The Wireless Association's Secure Messaging Initiative, that could replace or complement a traceback requirement? Are there other issues the Commission should consider in adopting a traceback requirement?

16. The Commission seeks comment on the specifics of the traceback process for texts, as well as any obstacles to industry-led traceback efforts that may work alongside or in place of rules the Commission may establish. Are tracebacks typically conducted for texting? If so, what does the process look like? Are there types of providers that are routinely reluctant to respond to these requests? Is information from traceback processes shared and then incorporated into blocking decisions? Are there network modifications, standards, or changes to software or hardware that would enable efficient texting traceback? If the Commission adopts a traceback requirement for texting, are there any necessary modifications the Commission should make to accommodate small business? Is there anything else the Commission should know about traceback for texting?

17. *E-Mail-to-Text Messages.* The Commission proposes to require providers to make email-to-text an opt in service, so that subscribers wishing to receive these types of messages would first have to opt in to the service. Would such a rule reduce the quantity of fraudulent text messages consumers receive? Does the anonymity of email-to-text make it more attractive to fraudulent texters? Commenters should discuss any drawbacks to requiring providers to block such messages if the consumer has not opted in to such service. For example, would this result in blocking important or urgent messages? If so, how could the Commission reduce this risk? Are there alternatives to making this service opt in that would have a similar effect? If so, what are they and how would they compare? Commenters should discuss how the Commission should define ''email-to-text service.'' Are there analogous services that should be covered, *e.g.,* voicemail-to-text? The Commission seeks comment on the details of any opt-in requirement and if the opt-in should be in writing. Must it be stand-alone and conspicuous? Will providers have the burden of demonstrating opt-in decisions? Are there any other issues the Commission should consider in adopting a rule?

18. *Further Efforts to Assist Small Businesses with Compliance.* The Commission seeks further comment on how the Commission can refine and expand its efforts to assist businesses, particularly small businesses, in complying with the one-to-one consent requirement. The Commission has determined based on the record that prior express written consent required under the Telephone Consumers Protection Act (TCPA) must be given to one seller at a time. Some commenters raised concerns that this requirement will increase costs or otherwise disadvantage small business lead generators and/or small business lead buyers. The Commission, therefore, is committed to monitoring the impact that the rule has on these businesses and to assist small businesses with complying with the one-to-one consent rule. The Commission seeks comment on whether and how it can further minimize any potential economic impact on small businesses in complying with the one-to-one consent requirement for prior express written consent under the TCPA. Are there ways to further clarify or refine this requirement to further minimize any compliance costs? What impact would such refinements have on consumers? Are there further outreach efforts or other ways the Commission can assist small businesses in complying with the one-to-one consent rule?

19. *Benefits and Costs.* The Commission estimates that the total harm of unwanted and illegal texts is at least $16.5 billion. Assuming a nuisance harm of five cents per spam text, the Commission estimates total nuisance harm to be $11.3 billion (*i.e.,* five cents

multiplied by 225.7 billion spam texts). Further, the Commission estimates that an additional $5.3 billion of harm occurs annually due to fraud. Previously, the Commission estimated the harm due to fraud from scam texts at $2 billion. The Commission revised this figure upward in proportion with the increase in spam texts, resulting in an estimate of $5.3 billion. The Commission seeks comment on these estimates of harm and on the costs of the proposals to reduce the harm of unwanted and illegal texts. The Commission will analyze any detailed cost data received in comments.

20. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how the proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

21. *Legal Authority.* The Commission seeks comment on its authority to adopt several issues: (i) additional blocking requirements and related approaches to protect consumers from illegal texts; (ii) text message authentication; and (iii) whether to make email-to-text an opt-in service. The Commission has authority to regulate certain text messages under the TCPA, particularly with regard to messages sent using an autodialer and without the consent of the called party. The Commission seeks comment on whether it has legal authority to adopt rules addressing these issues under the TCPA or the TRACED Act. For example, is the Commission's TCPA jurisdiction sufficient to support the blocking proposals, and does the TRACED Act provide the Commission with additional authority to adopt these rules?

22. Similarly, does the TCPA grant the Commission sufficient authority to adopt the rules regarding requiring email-to-text to be an opt-out service? Commenters should also discuss whether the Commission has authority for the proposals under section 251(e) of the Communications Act, which provides the Commission with ''exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States,'' particularly to adopt any authentication, traceback, or blocking requirements. The Commission found authority to implement STIR/SHAKEN for voice service providers under section 251(e) of the Act in order to prevent the fraudulent exploitation of numbering resources. Does section 251(e) of the Act grant the Commission authority to adopt implementation of authentication for text messages?

23. The Commission seeks comment on the authority under the Truth in Caller ID Act for these proposals. The Commission found that it has authority under this statute to adopt a blocking requirement in the Text Blocking Order, 88 FR 21497 (April 11, 2023), and FNPRM, 88 FR 20800 (April 7, 2023). The Commission also found authority under this provision to mandate STIR/SHAKEN implementation, explaining that it was ''necessary to enable voice service providers to help prevent these unlawful acts and to protect voice service subscribers from scammers and bad actors.'' The Commission seeks comment on whether that same reasoning applies here. The Commission also seeks comment on whether it has authority for these proposals under Title III of the Act. Are there any other sources of authority the Commission could rely on to adopt any of the rules discussed in the *Second FNPRM?*

Initial Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *Second FNPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Second FNPRM.* The Commission will send a copy of the entire *Second FNPRM,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second FNPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

25. *Need for, and Objectives of, the Proposed Rules.* In the *Second FNPRM,* the Commission proposes additional action to stop unwanted and illegal text messages that may harass and defraud consumers. Specifically, the Commission proposes extending the call blocking requirements to require all downstream providers to block the texts from upstream providers that fail to block after Commission notification. The Commission also seeks comment on requiring providers to block texts based on content-neutral analytics, and on whether it is appropriate to adopt a 24-hour traceback response requirement for text messaging. The *Second FNPRM* also requests comment on alternative approaches to protect consumers from unwanted texts, and any additional protections that may be necessary in case of erroneous blocking. In addition, the Commission seeks comment on the viability of text authentication, and whether it should require industry updates on its feasibility. Finally, the Commission proposes requiring providers to make email-to-text an opt-in service.

26. *Legal Basis.* The proposed action is authorized pursuant to sections 4(i), 4(j), 227, 301, 303, 307, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, 301, 303, 307, and 316.

27. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. 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.

28. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, 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 SBA's 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.

29. 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.

30. 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, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

31. *Wireless Carriers and Service Providers.* Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these service providers. The SBA small business 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 that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 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.

32. *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.

33. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The *Second FNPRM* includes proposals that may alter the Commission's current information collection, reporting, recordkeeping, or compliance requirements for small entities. Specifically, the proposal to extend call blocking mandates to require all downstream providers to block the texts from upstream providers that fail to block after Commission notification, and requiring providers to block texts based on content-neutral analytics would create new obligations for small entities and other providers. Similarly, establishing a 24-hour traceback response requirement for text messaging and requiring providers to make email-to-text an opt in service would also impose new compliance obligations on all providers, including small businesses. Additional blocking requirements, if adopted, such as requiring originating providers to block texts after notification from the Commission that the texts are likely to be illegal should not be a burden for small entities due to the fact that mobile wireless providers are currently blocking texts that are likely to be illegal. The Commission anticipates that the information it will receive relating to cost and benefit analyses will help identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from the proposals and inquiries we make in the *Second FNPRM.*

34. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities.'' In the *Second FNPRM* the Commission considered and seeks comment on several alternatives that may significantly impact small entities. As the Commission evaluates additional blocking requirements to protect consumers from illegal texts, the Commission seeks comment on how to define originating providers, and whether it should apply these rules to some other entity in the chain to better protect consumers. The Commission proposes blocking messages based on their source, but considers alternatively whether they should be blocked on other criteria such as traffic that is ''substantially similar'' to blocked texts. In addition, the Commission seeks comment on alternatives to requiring providers to block texts based on content-neutral reasonable analytics. The Commission also requests comment on alternatives to the proposed blocking or mitigation rules that would help to protect consumers from unwanted and illegal texts. The Commission expects to fully consider whether any of the costs associated with the proposed text blocking requirements can be alleviated for small entities and any alternatives to minimize the economic impact for small entities following the review of comments filed in response to the *Second FNPRM.*

35. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation to part 64 continues 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, 403(b)(2)(B), (c), 616, 617, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

■ 2. Amend § 64.1200 by adding paragraph (s) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(s) A mobile wireless provider must:

(1) A terminating mobile wireless provider must, upon receipt of a Notification of Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s)(1), including, when required, blocking all texts from the identified number or numbers. The Enforcement Bureau will issue a Notification of Illegal Texts that identifies the number(s) used and the date(s) the texts were sent or received; provide the basis for the Enforcement Bureau's determination that the identified texts are unlawful; cite the statutory or regulatory provisions the identified texts violate; direct the provider receiving the notice that it must comply with this section; and provide a point of contact to be used by a subscriber to a listed number to dispute blocking. The Enforcement Bureau's Notification of Illegal Texts shall give the identified provider a reasonable amount of time to comply with the notice. The Enforcement Bureau shall make the Notification of Illegal Texts in EB Docket No. 23–418 available at *https://www.fcc.gov/ecfs/search/search-filings.* The provider must include a certification that it is blocking all texts from the number or numbers and will continue to do so unless the provider learns that the number has been reassigned, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it shall notify the Enforcement Bureau and cease blocking. The provider is not required to monitor for number reassignments.

(2) If an originating provider, upon receipt of a Notification of Suspected Illegal Texts from the Commission through its Enforcement Bureau, take the actions described in this paragraph (s)(2), including, when required, blocking all texts from the source. The Enforcement Bureau will issue a Notification of Suspected Illegal Texts that identifies with as much particularity as possible the suspected illegal texts including the number(s) used and the date(s) the texts were sent or received; provides the basis for the Enforcement Bureau's reasonable belief that the identified texts are unlawful; cites the statutory or regulatory provisions the identified texts appear to violate; and directs the provider receiving the notice that it must comply with this section. The Enforcement Bureau's Notification of Suspected Illegal Texts shall give the identified provider a minimum of 14 days to comply with the notice. Each notified provider must promptly investigate the identified texts and report the results of that investigation to the Enforcement Bureau within the timeframe specified in the Notification of Suspected Illegal Texts.

(i) The provider must include a certification that it is blocking all texts from the source, and will continue to do so unless:

(A) The provider determines that the identified texts are not illegal, in which case it shall provide an explanation as to why the provider reasonably concluded that the identified texts are not illegal and what steps it took to reach that conclusion; or

(B) The provider learns that the number has been reassigned and the source cannot be otherwise identified in a content-neutral and competitively-neutral manner, in which case the provider shall promptly notify the Enforcement Bureau of this fact and include any information it has obtained that demonstrates that the number has been reassigned. If, at any time in the future, the provider determines that the number has been reassigned, it should notify the Enforcement Bureau and cease blocking unless further blocking of the source can be done in a content-neutral and competitively neutral manner.

(ii) If an originating mobile wireless provider fails to respond to the Notification of Suspected Illegal Texts, the Enforcement Bureau determines that the response is insufficient, the Enforcement Bureau determines that the provider is continuing to originate texts from the same source that could be blocked after the timeframe specified in the Notification of Suspected Illegal Texts, or the Enforcement Bureau determines based on the evidence that the texts are illegal despite the provider's assertions, the Enforcement Bureau may issue an Initial Determination Order to the provider stating the Bureau's initial determination that the provider is not in compliance with this section. The Initial Determination Order shall include the Enforcement Bureau's reasoning for its determination and give the provider a minimum of 14 days to provide a final response prior to the Enforcement Bureau making a final determination on whether the provider is in compliance with this section.

(A) If an originating mobile wireless provider does not provide an adequate response to the Initial Determination Order within the timeframe permitted in that Order or continues to originate texts from the same source onto the U.S. network, the Enforcement Bureau may issue a Final Determination Order finding that the provider is not in compliance with this section. The Final Determination Order shall be made available in EB Docket No. 22–174 at *https://www.fcc.gov/ecfs/search/search-filings.* A Final Determination Order may be issued up to one year after the release date of the Initial Determination Order and may be based on either an immediate failure to comply with this rule or a determination that the provider has failed to meet its ongoing obligation under this rule to block all texts from the identified source.

(B) When notified by the Commission through its Enforcement Bureau that a Final Determination Order has been issued finding that an originating mobile wireless provider has failed to block as required under paragraph (s)(1) of this section, block and cease accepting all texts received directly from the identified originating provider beginning 30 days after the release date of the Final Determination Order. This paragraph (s)(2) applies to any provider immediately downstream from the originating provider. The Enforcement Bureau shall provide notification by making the Final Determination Order in EB Docket No. 22–418 available at *https://www.fcc.gov/ecfs/search/search-filings.* Providers must monitor EB Docket No. 22–174 and initiate blocking no later than 30 days from the release date of the Final Determination Order.

[FR Doc. 2023–28833 Filed 1–25–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 23–427; FCC 23–115; FR ID 197786]

Reporting Requirements for Commercial Television Broadcast Station Blackouts

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission proposes a reporting framework for TV station blackouts occurring on video service platforms offered by cable operators, satellite TV providers, and other multichannel video programming distributors (MVPDs). The proposed rule would require notification to the Commission when broadcast programming is disrupted for over 24 hours as a result of an inability to obtain a broadcast station's consent to retransmit its signal. The proposed reporting framework would require MVPDs to publicly report to the Commission the beginning and end of any qualifying blackout of a commercial broadcast television station, or stations, and disclose either publicly or confidentially the number of subscribers affected by the blackout. Timely notification of these blackouts via a Commission-hosted reporting portal would ensure that the Commission and the public receive prompt and accurate information about critical MVPD service disruptions involving broadcast stations when they occur.

DATES: Comments are due on or before February 26, 2024. Reply comments are due on or before March 26, 2024. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before March 26, 2024.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998). You may submit comments, identified by MB Docket No. 23–427, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically by accessing ECFS at: *http://www.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Paper filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Cathy Williams, FCC, via email to Cathy *Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Brooke Olaussen of the Media Bureau, Policy Division at *brooke.olaussen@fcc.gov,* (202) 418–1060. For additional information concerning the Paperwork Reduction Act proposed information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at *Cathy.Williams@fcc.gov,* (202) 418–2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), FCC 23–115, adopted on December 19, 2023 and released on December 21, 2023. The full text of this document is available electronically via the Commission's website at: *https://docs.fcc.gov/public/attachments/FCC-23-115A1.pdf.* To request materials in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

Synopsis

I. Introduction

1. This Notice of Proposed Rulemaking (*NPRM*) proposes to amend the Commission's rules to require notification to the Commission when a blackout of a broadcast television station, or stations, occurs on a video programming service offered by a multichannel video programming distributor (MVPD) for 24 hours or more due to a breakdown in retransmission consent negotiations between broadcasters and MVPDs. The proposed reporting framework would require public notice to the Commission of the beginning and resolution of any blackout and submission of information about the number of subscribers affected (which we propose may be designated as confidential). By requiring timely notification of broadcast station blackouts in a centralized, Commission-hosted database, these proposed reporting requirements would ensure that the Commission and public receive prompt and accurate information about critical MVPD service disruptions involving broadcast stations when they occur.

II. Background

2. The Communications Act of 1934, as amended (the Act), requires that cable operators, satellite TV providers, and other MVPDs obtain a broadcast TV station's consent to lawfully retransmit the signal of a broadcast station to subscribers.[1] Commercial stations may either give consent by demanding carriage (must carry) or seek to negotiate for compensation in exchange for carriage (retransmission consent), and may switch between these choices every three years.[2] If a former ''must carry''

[1] 47 U.S.C. 325.

[2] *Id.* Section 325(b)(3)(B).

station elects retransmission consent but is unable to reach agreement for carriage, or the parties to an existing retransmission consent agreement do not extend, renew, or revise that agreement prior to its expiration, the MVPD loses the right to carry the signal. The result is a ''blackout'' of that existing broadcast programming on the MVPD platform.[3] When these broadcast station blackouts occur, the MVPD's subscribers typically lose access through their MVPD service to the station's entire signal, including both the national and local programming provided by the broadcaster.[4] Thus, if the blacked-out broadcast station was owned by or affiliated with a national broadcast network—such as ABC, CBS, FOX, NBC, The CW, Telemundo, or Univision—subscribers would be unable to access through their MVPD service that broadcaster's network programming as well as the local news, traffic, weather, and emergency information programming provided by their local station.

3. Over the past decade, data indicates that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically. For the first 20 years of the retransmission consent regime, S&P Capital IQ reports that there were a total of 81 failed retransmission consent negotiations that resulted in blackouts of 447 broadcast TV stations in 365 markets, with two thirds of the impasses occurring just in the last three years of that period, from 2011 to 2014.[5] This increase in the number of blackouts has persisted for over a decade, and the impact of each individual blackout has increased as more stations are taken off the air for longer periods of time. In 2019 alone, just 18 retransmission consent impasses resulted in 272 station blackouts that spanned 205 markets and affected 26.5 million subscribers.[6] According to S&P Capital IQ, these blackouts ''on average remained in effect for 171 days—higher than the 98-day average in 2018, 33 days in 2017 and 52 days in 2016.'' [7] Some MVPD subscribers in over half of television markets continue to experience blackouts every year.[8]

4. Members of Congress have expressed concern about the impact of broadcast station blackouts. After a March 2022 FCC oversight hearing, Rep. Clarke of New York noted that ''[o]ver the last two years, there were an estimated 460 blackouts associated with retransmission consent impasses, resulting in consumers losing access to their favorite shows. Unfortunately, these blackouts may be used as leverage during retransmission negotiations by broadcasters at the expense of consumer access to television programming.'' [9] In addition, during high-profile retransmission consent disputes, the Commission often receives letters from members of Congress urging the Commission to take action to prevent or end a broadcast station blackout.[10]

5. Added as part of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act), section 325 of the Act prohibits broadcast television stations and MVPDs from ''failing to negotiate [retransmission consent] in good faith,'' [11] and the Commission's rules provide a framework for determining whether those negotiations are in fact conducted in good faith.[12] If a broadcast station or MVPD believes the other party has not acted in good faith, it may file a good faith complaint with the Commission either before or after a carriage agreement is signed.[13]

6. Congress has not, however, authorized the Commission to require that parties resolve retransmission consent disputes with carriage agreements, or to force carriage in the absence of an agreement.[14] While section 325 of the Act grants the Commission authority to establish regulations governing retransmission consent negotiations, the Commission has repeatedly determined that this authority does not extend to requiring carriage of a broadcast station during a retransmission dispute.[15] Given this

[3] Federal Communications Commission, *Retransmission Consent, https://www.fcc.gov/media/policy/retransmission-consent* (last updated Sept. 27, 2021).

[4] Although some MVPD subscribers may be able to view the blacked out local broadcast signals using over-the-air antennas or other equipment, not all live in locations that can receive over-the-air signals, and further not all would have the equipment necessary to do so. FCC, *DTV Reception Maps, https://www.fcc.gov/media/engineering/dtvmaps* (last visited Sept. 28, 2023) (showing over-the-air signal availability and noting that ''[a]ctual signal strength may vary based on a variety of factors, including, but not limited to, building construction, neighboring buildings and trees, weather, and specific reception hardware,'' and that ''signal strength may be significantly lower in extremely hilly areas'').

[5] Atif Zubair, *History of Retrans Deals and Signal Blackouts, 1993–2014 YTD,* Market Intelligence, S&P Capital IQ Pro (Feb. 25, 2014) (reporting data from ''publicly announced retrans agreements between broadcasters and multichannel operators'' from 1993 through Feb. 25, 2014); *id.* (''Blackouts in our database show that signal disruptions have become more frequent during the past three years since 2011, contributing 54 of the total 81 blackouts in our database.'').

[6] Atif Zubair, *Retrans Roundup 2019,* Market Intelligence, S&P Capital IQ Pro (Jan. 21, 2020) (reporting ''2019 publicized broadcast signal disruptions'' data as of Dec. 31, 2019 in Excel format accessible via link to ''retrans agreement and signal disruptions databases'' embedded in article).

[7] *Id.*

[8] Peter Leitzinger, *Retrans Roundup 2021,* Market Intelligence, S&P Capital IQ Pro (Jan. 28, 2022) (reporting 2020 and 2021 ''publicized broadcast signal disruptions'' data in Excel format accessible via link to ''retrans agreement and signal disruptions databases'' embedded in article); Peter Leitzinger, *Retrans Roundup 2022,* Market Intelligence, S&P Capital IQ Pro (Feb. 7, 2023) (reporting ''2022 publicized broadcast signal disruptions'' data as of Jan. 15, 2023 in Excel format accessible via link to ''retrans agreement and signal disruptions databases'' embedded in article). By MVPDs' own count, between 2010 and 2019 there have been more than 1,250 broadcast station blackouts since 2010. Eun-A Park, Rob Frieden, Krishna Jayakar, *Blackouts in Retransmission Consent Negotiations: Empirical Analysis of Factors Predicting their Frequency and Duration,* TPRC48: The 48th Research Conference on Communication, Information, and internet Policy (December 17, 2020) *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3749577.*

[9] *Subcommittee on Communications and Technology Hearing on Connecting America: Oversight of the FCC,* 117th Cong., at 7 (Mar. 31, 2022), *https://docs.house.gov/meetings/IF/IF16/20220331/114545/HHRG-117-IF16-Wstate-RosenworcelJ-20220331-SD001.pdf* (Subcommittee question posed in statement of the Honorable Jessica Rosenworcel, Chairwoman, FCC).

[10] *See, e.g.,* Letter from Rep. David Cicilline *et al.,* U.S. House of Representatives, to Jessica Rosenworcel, Chairwoman, FCC (Oct. 25, 2022), *https://docs.fcc.gov/public/attachments/DOC-389144A2.pdf* (''While we take no position as to the merits of this dispute, we believe that Rhode Islanders should not be caught in the middle and as a consequence be left without access to local news and programming. We encourage the Federal Communications Commission to do everything in its power to help bring the parties together so that negotiations can continue in good faith.'').

[11] 47 U.S.C. 325(b)(3)(C). In 1999, Congress enacted the Satellite Home Viewer Improvement Act (SHVIA), which required television stations to negotiate retransmission consent with MVPDs in good faith and included the ''competitive marketplace considerations'' provision. Public Law 106–113, 113 Stat. 1501 (1999). Although SHVIA imposed the good faith negotiation obligation only on broadcasters, in 2004 Congress made the good faith negotiation obligation reciprocal between broadcasters and MVPDs. Public Law 108–447, 118 Stat. 2809 (2004) (referred to as the Satellite Home Viewer Extension and Reauthorization Act (SHVERA)).

[12] 47 CFR 76.65(b).

[13] *Id.* §§ 76.65(c), 76.65(e).

[14] *See, e.g.,* Letter from Jessica Rosenworcel, Chairwoman, FCC, to Rep. David Cicilline *et al.,* U.S. House of Representatives (Nov. 1, 2022), *https://docs.fcc.gov/public/attachments/DOC-389144A1.pdf* (responding to a letter from members of Congress urging FCC action after failed carriage negotiations between Nexstar and Verizon resulted in a blackout and emphasizing that ''it is important to understand that the Commission's authority in this area is limited, as under Section 325 we cannot order or otherwise require carriage of a broadcast station during a dispute.'').

[15] *Amendment of the Commission's Rules Related to Retransmission Consent,* MB Docket No. 10–71, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2720, para. 3 (2011) (*2011 Retrans Consent NPRM*) (''The Commission does not have the power to force broadcasters to consent to MVPD carriage of their signals nor can the Commission order binding arbitration.''); *id.* at 2728, para. 18 (''[R]egarding interim carriage, examination of the Act and its legislative history has convinced us that the Commission lacks authority to order carriage in the

Continued

limitation, the Commission's good faith rules focus on ''develop[ing] and enforce[ing] a process'' conducive to negotiation rather than ''sit[ting] in judgment of the terms of every retransmission consent agreement[.]'' [16] Nevertheless, broadcast station blackouts have remained a cause for concern. In a 2011 action proposing amendments to the Commission's good faith rules, the Commission observed that ''[i]n recent times, the actual and threatened service disruptions resulting from increasingly contentious retransmission consent disputes present a growing inconvenience and source of confusion for consumers.'' [17] Since the Commission made that observation, the number of retransmission consent impasses has continued to increase, causing service disruptions for consumers.[18]

7. In addition to establishing the retransmission consent regime, the 1992 Cable Act also bolstered the Commission's customer service authority over cable and satellite TV providers. Pursuant to sections 632(b) and 335(a), the Commission may adopt customer service requirements for cable operators and public interest regulations for DBS providers.[19] Section 632(b) of the Act directs the Commission to ''establish standards by which cable operators may fulfill their customer service requirements'' and specifies a set of minimum customer service areas that the adopted standards must cover.[20] In 1993, the Commission implemented this mandate in § 76.309 of its rules, adopting a single set of customer service requirements for cable operators in the areas Congress specified.[21] While at that time the Commission declined to adopt additional standards in areas not specified in the statute, it reserved the right to revise and supplement the standards.[22]

8. Similarly, section 335(a) authorizes the Commission to impose ''public interest or other requirements for providing video programming'' on DBS providers.[23] The statute directs the Commission to impose certain minimum obligations on DBS providers, including complying with the political programming requirements of sections 312(a)(7) and 315 of the Act.[24] It also directs the Commission to examine opportunities that may serve the principle of localism in the Act.[25] As with section 632, when implementing section 335 of the Act, the Commission declined to impose any additional public interest obligations on DBS providers beyond the minimum protections specified in the statute.[26] The Commission explained that DBS service ''is still a relatively young industry and we decline to impose any additional obligations on the DBS industry before we see how DBS serves the public.'' [27]

9. Currently, neither broadcast stations nor MVPDs are under any obligation to report to the Commission MVPD service disruptions involving broadcast programming. Neither the Commission nor the public has a systematic method for learning of significant MVPD service disruptions involving broadcast programming.[28] When a party to a retransmission consent negotiation files a complaint with the Commission alleging a violation of the Commission's good faith negotiation rules, the complaint process requires the parties to provide the Commission with relevant details about the blackout and each party's assertions as to why the negotiation reached an impasse. Since the adoption of the good faith negotiation rules in 2000, there have been relatively few complaints alleging violations of the Commission's good faith negotiation rules despite an escalation in the number of stalled or failed retransmission consent negotiations resulting in blackouts.[29] The Commission usually learns of broadcast station blackouts on MVPD platforms through reports of disputes in the media or informal communication with staff. This ad hoc process does not provide the Commission, Congress, or the public [30] with timely or specific information regarding service disruptions.[31] Accordingly, we initiate this rulemaking.

III. Discussion

10. In the discussion below, we propose to require that MVPDs report retransmission consent blackouts within 48 hours and notify the Commission within two business days of its resolution. We discuss the specific aspects of the proposed reporting obligations and our proposed rule, and we address the Commission's authority to adopt the proposed requirements. We request comment on all aspects of the proposal, including the proposed rule as set forth below in Appendix A.

A. Overview and Policy Considerations

11. Given the data discussed above, we are concerned about the increasing number and duration of broadcast station blackouts on MVPD platforms across the country and the Commission's lack of ready access to basic information about such service disruptions. Given that many broadcast

absence of a broadcaster's consent due to a retransmission consent dispute. . . . We thus interpret section 325(b) to prevent the Commission from ordering carriage over the objection of the broadcaster, even upon a finding of a violation of the good faith negotiation requirement.''); *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity,* CS Docket No. 99–363, First Report and Order, 15 FCC Rcd 5445, 5471, para. 60 (2000) (*Good Faith Order*) (''[W]e see no latitude for the Commission to adopt regulations permitting retransmission during good faith negotiation or while a good faith or exclusivity complaint is pending before the Commission where the broadcaster has not consented to such retransmission.'').

[16] *Good Faith Order,* 15 FCC Rcd at 5454–55, paras. 23–24.

[17] *2011 Retrans Consent NPRM,* 26 FCC Rcd at 2729, para. 20.

[18] *Supra* para. 3.

[19] 47 U.S.C. 552(b), 335(a).

[20] 47 U.S.C. 552(b).

[21] 47 CFR 76.309(c)(1) (addressing cable system office hours and telephone availability), 76.309(c)(2) (addressing installations, outages, and service calls), 76.309(c)(3) (addressing communications between cable operators and cable subscribers); *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 Consumer Protection and Customer Service,* MM Docket No. 92–263, Report and Order, 8 FCC Rcd 2892, 2901, para. 34 (1993) (*Cable Operator Customer Service R&O*) (''[W]e are adopting a single set of federal customer service standards which deal with the specific areas set out in section 632(b).'').

[22] *Cable Operator Customer Service R&O,* 8 FCC Rcd at 2907, para. 69.

[23] 47 U.S.C. 335(a).

[24] *Id.*

[25] *Id.*

[26] *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992,* MM Docket No. 93–25, Report and Order, 13 FCC Rcd 23254, 23279–80, para. 64 (1998).

[27] *Id.* at 23280, para. 64.

[28] While, as required by our rules, MVPDs notify subscribers when specific broadcast station channels are blacked out, we are not aware of any systematic method used by MVPDs or broadcasters to notify the general public of broadcast station blackouts. *Infra* note 31.

[29] *Id. See 2011 Retrans Consent NPRM,* 26 FCC Rcd at 2724, para. 12 (noting at the time that ''[t]here have been very few complaints filed alleging violations of the Commission's good faith rules''); *DirecTV, LLC; AT&T Services, Inc., Complainants,* v. *Deerfield Media, Inc. et al.,* MB Docket No. 19–168, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695, 10699, para. 8 (2020) (noting that the Deerfield good faith complaint ''is only the second good faith complaint that was not withdrawn, dismissed, or denied since the rules were established and the first one that the Commission has had the opportunity to consider'').

[30] Section 76.1603 provides that cable operators must notify their subscribers ''as soon as possible'' when service changes occur due to failed retransmission consent or program carriage negotiations. 47 CFR 76.1603(b).

[31] While S&P Capital IQ Pro's retransmission database is a helpful resource, it provides limited visibility into the retransmission consent marketplace on an ongoing basis. The database is typically published only in yearly intervals, excludes independent and class A TV stations, and only lists publicized blackouts. Therefore, we do not believe data collected by S&P is a suitable substitute for complete or timely information on service disruptions. *Supra* note 8.

station blackouts on MVPD platforms occur without either party filing a complaint with the Commission, we cannot rely on good faith complaints to inform us when a deal impasse has resulted in a blackout, nor can we consider such complaints an accurate sampling of significant service disruptions. In addition, members of Congress regularly ask the Commission for information on broadcast station blackouts when they occur. Often the Commission does not have access to this important information through a consistent, reliable, and systematic means. To close this information gap, we tentatively conclude that obtaining blackout information from MVPDs would be the most effective method for the Commission to gain important and timely information about broadcast station blackouts occurring across the country and better fulfill our statutory obligation involving the retransmission consent negotiation process.[32]

12. Access to a centralized source of information about where and when broadcast station blackouts occur would be beneficial not only to the Commission, but also to consumers. To make informed decisions regarding video service, consumers must have access to easily available, accurate, and timely information about such services. While cable subscribers receive notice from their cable operator when an individual broadcast station blackout affects their own channel lineup and video service,[33] on a broader scale, consumers generally do not have access to a consolidated source of information about broadcast station blackouts occurring in aggregate. Such information would increase transparency about the frequency and duration of blackouts and help consumers understand the extent to which blackouts might be a problem not just in their own locality but in other areas of the country as well. For example, having aggregate data about blackouts may be a useful metric for consumers looking for a new MVPD service provider. For consumers that place a premium on continuity of service, having access to this data may enable them to investigate which MVPD service providers—as well as broadcast affiliates—have a stronger history of blackouts.

13. *Entities Responsible for Reporting.* We seek comment on requiring affected MVPDs that stop carrying broadcast signals pursuant to expired retransmission consent agreements, including cable operators and DBS providers (Reporting Entities),[34] to comply with the proposed blackout reporting requirements, as more fully discussed below. While both MVPDs and broadcasters are subject to the requirements of section 325 of the Act and the Commission's good faith rules, it is the responsibility of the MVPD, rather than the broadcaster, to stop retransmitting the broadcast station's signal, and thereby remove the programming that is subject to blackout from their MVPD platforms upon the expiration of a carriage agreement.[35] Thus, as a practical matter, it is the MVPD who has the most ready access to and first-hand knowledge of when and where a broadcast station blackout occurs and which subscribers are affected, thereby ensuring that the Commission would receive the most complete, accurate, and up-to-date information. Further, as it is the MVPD subscribers who are directly impacted by these blackouts, we believe it makes the most sense for MVPDs to be responsible for reporting blackout information through the reporting portal. As a result, we tentatively conclude it would be least burdensome on MVPDs to report this information promptly and accurately to the Commission.

14. We therefore propose requiring MVPDs to notify the Commission of any blackouts of a broadcast station or stations that occur on their systems due to a loss of retransmission consent, and we seek comment on this proposal. Under this proposal, MVPDs would report incidents during which broadcast programming is disrupted for over 24 hours as a result of an inability to obtain a broadcast station's consent to retransmit its signal. We seek comment on these understandings and this proposal. For example, are there circumstances in which the broadcaster, rather than the MVPD, removes the broadcast station(s) from the MVPD's platform?

15. Alternatively, we seek comment on whether we should impose the reporting obligation solely on broadcasters or impose a joint blackout reporting requirement on both MVPDs and broadcasters. Would adopting a broadcaster-only reporting requirement or imposing a joint reporting obligation on both MVPDs and broadcasters provide additional benefits to the public? Do broadcasters have access to different, additional, or more timely information about blackouts that would be beneficial for the public to see in real-time? If reporting obligations were the same for both parties, would the Commission need to address or attempt to resolve conflicting reports? Instead of requiring broadcasters to report blackouts, should we rely instead on broadcasters voluntarily providing additional information to supplement blackout notices submitted by MVPDs they believe contain inaccurate or incomplete information?

16. *Reporting Framework.* As discussed in more detail below, we propose requiring MVPDs to notify the Commission of both the start and conclusion of a broadcast station blackout. The initial notification would provide basic blackout information, both public and confidential, to the Commission within 48 hours of the start of a reportable broadcast station blackout (Initial Blackout Notification). The final notification, submitted no later than two business days after the end of the reportable broadcast station blackout, would publicly identify the date retransmission resumed (Final Blackout Notification). We propose that this information be collected through an online reporting portal designed, hosted, and administered by the Commission.[36] Under our proposal, we will delegate to the Media Bureau the authority to issue a public notice giving Reporting Entities notice of the specific reporting procedures to submit blackout information via the reporting portal and identifying the date on which the reporting requirement would become effective. Public blackout information collected through the portal would then be available on the Commission's website. We seek comment generally on this proposal and on the specifics below. In addition, to the extent we adopt a reporting requirement for broadcasters, we seek comment on whether this same reporting framework should be applied to broadcasters or whether a different approach is appropriate for broadcasters.

17. To streamline reporting, we propose creating an online reporting portal, modeled after the Commission's Network Outage Reporting System (NORS).[37] The proposed data to be reported would be filed with the

[32] 47 U.S.C. 325(b)(3)(A).

[33] 47 CFR 76.1603(b).

[34] *See* 47 CFR 76.64(d) (''A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.''); *infra* Appendix A—Proposed Rules, § 76.68(c)(1).

[35] 47 U.S.C. 325(a).

[36] *Supra* paras. 23, 27.

[37] Federal Communications Commission, *Network Outage Reporting System (NORS), https://www.fcc.gov/network-outage-reporting-system-nors* (last updated Mar. 25, 2022).

Commission via this web-based system. As with NORS, this system would use an electronic template to promote the ease of reporting and encryption technology to ensure the security of the information fields. The proposed blackout information to be reported would be available to the public, except for more sensitive information regarding subscribers, which Reporting Entities may designate as confidential. We have aimed to tailor the proposed requirements so that they impose a minimal burden on Reporting Entities while still ensuring that the Commission and the public have access to critical information on service disruptions.[38] We seek comment on this approach.

18. We tentatively conclude that the timely provision and compilation of blackout information would allow the Commission and the public to systematically track and analyze information on broadcast station blackouts on MVPD platforms across the country. The availability of this information would also help the Commission determine the frequency and duration of blackouts nationwide and identify any statistically meaningful trends across blackouts. Without such reporting, the Commission will continue to have limited visibility into broadcast station blackouts.[39] In the long run, this impairs the Commission's ability to oversee the retransmission consent negotiation process as intended by Congress. The prompt provision of blackout information will allow the Commission to more effectively discharge its statutory responsibilities by better monitoring breakdowns in retransmission consent negotiations.[40] We seek comment on this analysis.

B. Proposed Reporting Requirements

19. We seek comment on the specific proposals that follow for implementing the proposed reporting requirements. In particular, we seek comment on whether reporting obligations should be mandatory or voluntary; the definition of a broadcast station blackout; the threshold for reporting a broadcast station blackout; how to submit the proposed filings; what information should be disclosed about broadcast station blackouts; what the costs and benefits of our proposed rule might be; and whether better alternatives exist, including a more streamlined rule for small entities.

20. *Mandatory Reporting.* We propose that blackout reporting be a mandatory obligation. Mandatory reporting would permit the Commission and the public to obtain a comprehensive, timely view of broadcast station blackouts occurring on MVPD platforms nationwide. This information would be beneficial to the Commission's efforts to keep abreast of the impact these blackouts have on viewers, local broadcasting, and MVPD service. In contrast, voluntary reporting would likely create substantial gaps in data that would significantly impair such efforts, as has been the Commission's experience in the past with voluntary reporting.[41] Considering these factors, we tentatively conclude that voluntary reporting would not sufficiently serve the information collection purposes of this reporting initiative. We seek comment on this tentative conclusion. Are there other regulatory alternatives the Commission should consider?

21. *Definition of Broadcast Station Blackout.* For the purposes of this reporting rule, we propose defining a ''Broadcast Station Blackout'' as ''any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission.'' [42] With this definition, we seek to encompass all blackouts occurring as a result of a retransmission consent dispute, and thus, in the context of blackout reporting, include all commercial full power, class A, and low power television (LPTV) broadcast stations within the definition of a ''commercial television broadcast station.'' [43] We tentatively conclude it is appropriate to include class A and LPTV stations within the definition of ''commercial television broadcast station'' here because these stations, like full power stations, are subject to the requirements of section 325 of the Act and the Commission's good faith rules.[44] We seek comment on this analysis and our proposed definition. Have there been or could there be instances in which, due to a retransmission consent dispute, MVPDs are required to cease retransmitting only some programming streams of a broadcast station and not others (for example, only the primary stream, but not the multichannel streams)? [45] If so, does the proposed definition adequately cover these scenarios? Are there any reasons why Broadcast Station Blackouts involving class A and LPTV stations should not be subject to the proposed reporting requirements?

22. *Reporting Threshold.* We propose requiring Reporting Entities to report all Broadcast Station Blackouts that last for over 24 hours. We tentatively conclude this reporting threshold will provide a sufficient level of information to build a more precise and complete picture of the state of blackouts that have a significant impact on consumers. Collecting information on all blackouts lasting over 24 hours will allow the Commission and the public to gain a better understanding of the frequency and duration of blackouts occurring in the retransmission consent marketplace. Blackouts lasting over 24 hours are more likely to cause consumer harm, whereas blackouts of shorter duration are more likely to have a lesser impact on viewers, and thus we propose that we should not impose reporting requirements on blackouts lasting less than 24 hours. We therefore tentatively conclude this threshold appropriately balances the burdens of Reporting Entities and the information needs of the Commission and consumers. We seek comment on the proposed reporting threshold and whether there should be any additional reporting thresholds. For example, should we also require reporting for blackouts based on a metric other than duration of the service disruption? If so, what metrics should be used to determine what would qualify as a reportable event? Do commenters believe the proposed reporting threshold is appropriate, or should reporting obligations be triggered

[38] *Infra* para. 28.

[39] *Supra* note 31.

[40] We note that these reporting requirements would be separate from our good faith complaint procedure and are not intended to replace or inform the good faith complaint process.

[41] *See Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers,* PS Docket No. 11–82, Notice of Proposed Rulemaking, 26 FCC Rcd 7166, 7189–90, para. 57 (2011) (summarizing the Commission's unsuccessful attempt at voluntary outage reporting prior to the adoption of NORS and the part 4 rules: ''previous provider participation in voluntary network-outage reporting was 'spotty,' the 'quality of information obtained was very poor,' and there was 'no persuasive evidence in the record that . . . *all* covered communications providers would voluntarily file accurate and complete outage reports for the foreseeable future or that mandatory reporting is not essential to the development, refinement, and validation of best practices.' Hence, mandatory reporting was adopted to ensure timely, accurate reporting.'') (quoting *New Part 4 of the Commission's Rules Concerning Disruptions to Communications,* ET Docket No. 04–35, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, 16851–52, paras. 37–39 (2004)).

[42] *Infra* Appendix A, § 76.68(c)(2).

[43] *Id.* § 76.68(c)(3).

[44] 47 U.S.C. 325(a) (''. . . nor shall *any* broadcasting station rebroadcast the program or any part thereof of another broadcasting station without the express authority of the originating station.'') (emphasis added). *Compare* 47 U.S.C. 325(b)(2)(A) (''This subsection shall not apply . . . to retransmission of the signal of a noncommercial television broadcast station.'').

[45] 47 CFR 76.64(j) (allowing retransmission agreements to ''specify the extent of the consent being granted, whether for the entire signal or any portion of the signal'').

by blackouts of longer or shorter duration? If proposing another reporting threshold, commenters should explain why they think it is more appropriate.

23. *Reporting Process.* Under our proposed rule, Reporting Entities would submit two notifications: an Initial Blackout Notification shortly after the beginning of a reportable Broadcast Station Blackout and a Final Blackout Notification after resumption of carriage. All information would be submitted to the Commission within a designated online reporting portal in accordance with procedures further specified in a Bureau-issued public notice following adoption of these proposed reporting requirements.[46] We seek comment on this proposed rule and the details discussed below.

24. *Initial Blackout Notification.* We propose that, in the event of a Broadcast Station Blackout lasting over 24 hours, after that threshold is met, the Reporting Entity must submit an Initial Blackout Notification as soon as practicable, but no later than 48 hours after the initial interruption to the broadcast station programming.[47] The following information would be reported in the Notification and available to the public: the name of the Reporting Entity; the station or stations no longer being retransmitted, including network affiliation(s), if any, of each affected primary and multicast stream; the name of the broadcast station group, if any, that owns the station(s); the Designated Market Areas in which affected subscribers reside; and the date and time of the initial interruption to programming.[48] Additionally, Reporting Entities would report the number of subscribers affected.[49] Critically, subscriber information is one of the key metrics by which a blackout's impact can be measured. We recognize that market-by-market subscriber data can be particularly sensitive and is information not routinely made public by MVPDs. Therefore we propose giving Reporting Entities the option to submit the subscriber data provided confidentially.[50] Reporting Entities would be able to opt for confidential treatment of the subscriber data provided by designating the data as confidential within the portal, rather than filing a separate request with the Commission.[51] We encourage Reporting Entities to submit an Initial Blackout Notification as soon as practicable, but do not believe that this proposed reporting obligation would require more than 24 hours to complete after a blackout becomes reportable. We tentatively conclude that the 48-hour reporting window reasonably balances the benefit of receiving prompt notice of a blackout with the burden of reporting by giving Reporting Entities a sufficient amount of time to gather and submit the proposed information.

25. We invite comment on this proposed information collection, the 48-hour reporting window, the public treatment of the non-subscriber data, and the confidential treatment of the subscriber data. Would it be beneficial to require entities to provide any additional information as part of the Initial Blackout Notification? Would it be beneficial to also have Reporting Entities identify the specific areas (for example, counties or cable communities) affected within the DMAs identified? If so, should entities report such information publicly or confidentially? Would any of the proposed disclosures be difficult for a Reporting Entity to provide within the proposed reporting window, and if so, why? Do commenters believe that the proposed 48-hour reporting window is sufficient, or do they believe a reporting window of longer or shorter duration would be more appropriate? If proposing another reporting window, commenters should explain why they think that time period is more appropriate. Is there any non-subscriber information disclosed in the Initial Blackout Notification for which Reporting Entities should be able to opt for confidential treatment by designating the data as confidential within the portal, rather than filing a separate request with the Commission? If so, why? Conversely, is there any reason why the subscriber information provided should not be given such confidential treatment?

26. *Final Blackout Notification.* No later than two business days after the resumption of carriage to subscribers, we propose that Reporting Entities submit a Final Blackout Notification, which would update the initial blackout notice provided.[52] The information in this Final Blackout Notification would be available to the public and would report the date on which retransmission resumed for each station included in the Initial Blackout Notification.[53] As an update to the Initial Blackout Notification, we envision that Reporting Entities will be able to easily update the information in the reporting portal for each station as it resumes retransmission. We request comment on this proposed Notification, including the information disclosures required, the proposed two-business-day reporting window, and the public treatment of the disclosures. In the event of a partial end to a reported blackout involving multiple stations (that is, the parties have resolved the retransmission consent dispute with respect to some of the blacked out stations, but not others), should reporting entities be required, as proposed, to timely report the resumption of carriage for each resumed station until all stations included in the Initial Blackout Notification have been accounted for? Or should Reporting Entities only be required to submit a report once the dispute has been resolved for all stations included in the initial notification (with different carriage resumption dates for different stations listed as appropriate)? Is there any other information we should request as part of this final notice? Would any of the proposed disclosures be difficult for a Reporting Entity to provide within the proposed reporting window? Are there any reasons why the final Notification should not be publicly available, and if so, why? Is there a point at which the Commission should consider a blackout to be permanent, or should we consider blackouts to be ongoing until a final notification is filed regardless of their duration?

27. *Submissions.* We propose providing an online reporting portal through which entities would be able to submit blackout notices to the Commission. We envision these notices would be made through a standardized form in the portal, fillable by the Reporting Entity, with fields for the various data categories. As noted above, the Bureau would announce specific instructions via public notice. We tentatively conclude that this approach to collecting data ensures that the Commission learns of reportable broadcast station blackouts in a timely manner and, at the same time,

[46] *Infra* Appendix A, § 76.68(a); *infra* para. 27.

[47] *Infra* Appendix A, § 76.68(a)(1).

[48] *Id.* § 76.68(a)–(b).

[49] *Id.* § 76.68(a)(1)(vi).

[50] *Id.* § 76.68(b).

[51] 47 CFR 0.459(a)(4) (''The Commission may use abbreviated means for indicating that the submitter of a record seeks confidential treatment, such as a checkbox enabling the submitter to indicate that the record is confidential. However, upon receipt of a request for inspection of such records pursuant to § 0.461, the submitter will be notified of such request pursuant to § 0.461(d)(3) and will be requested to justify the confidential treatment of the record, as set forth in paragraph (b) of this section''). Reporting Entities seeking confidential treatment of any other data requested pursuant to paragraphs (a)(1)(i) through (v) of the proposed rule must submit a request that the data be treated as confidential with the submission of the Initial Blackout Notification, along with their reasons for withholding the information from the public, pursuant to 47 CFR 0.459. *Infra* Appendix A, § 76.68(b).

[52] *Infra* Appendix A, § 76.68(a)(2).

[53] *Id.*

minimizes the amount of time and effort required to comply with the reporting requirements. We seek comment on how best to share the information collected from the Initial and Final Blackout Notifications with the public. For example, in addition to publicly posting the non-confidential portions of the blackout notices, should the web portal include a public-facing, searchable database of the information collected from the blackout notices? Or would it suffice for the Commission to publicly post the blackout notices by date of submission?

28. *Costs and Benefits.* We tentatively conclude this process is reasonable in light of the significant benefits to the Commission, Congress, and the public from having timely access to important and accurate information on service disruptions. As detailed above, we anticipate that the availability of this blackout information will have tangible benefits for the Commission and the public.[54] Moreover, we tentatively conclude that Reporting Entities already collect this information in the ordinary course of business for their internal use. Thus, we expect the only burden associated with the proposed reporting requirements would be the time required to complete the two notifications. We anticipate that electronic submission through the reporting portal will minimize the amount of time and effort that will be required to complete the proposed reporting obligations.[55] As a result, we expect that complying with our proposed reporting requirements would create a minimal administrative burden, and that, on balance, the benefits to the public resulting from compiling and analyzing this blackout information would outweigh any potential burden. We seek comment on the reasonableness of the proposed reporting process, and we request comment on relevant types of blackout information already being collected by cable operators, DBS providers, other MVPDs, and broadcast stations so that we can best align our metrics with what is already available to them. We invite comment on the burdens that might be imposed by the adoption of the proposed reporting requirements, and in particular welcome comments quantifying that burden and recommendations to mitigate it. Would collecting and reporting as proposed be more burdensome for small entities? [56] If so, why and to what degree? In addition, we seek comment on the benefits and drawbacks of treating the non-subscriber information disclosures in the Initial and Final Blackout Notification as public information. Is there any alternative reporting approach that would maximize the potential benefits and accomplish the proceeding's objectives in a less costly, less burdensome, and/or more effective manner? Should there be an additional or alternative reporting threshold for small entities? If so, what should that reporting threshold be and why is it necessary? Alternatively, is the burden of reporting outweighed by the benefits gained from the ability to better monitor and study reported blackouts?

29. *Digital Equity and Inclusion.* The Commission, as part of its continuing effort to advance digital equity for all,[57] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations [58] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

C. Legal Authority

30. We tentatively conclude the Commission has ample authority to adopt the proposed blackout reporting requirements. Section 325(b)(3)(A) of the Act grants the Commission broad authority to ''establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent.'' [59] The Commission has previously concluded that ''this provision grants the Commission authority to adopt rules governing retransmission consent negotiations[.]'' [60] Separately and in addition, section 325(b)(3)(C) mandates that broadcasters and MVPDs negotiate retransmission consent in good faith.[61] The Commission has express statutory authority to adopt rules implementing this requirement.[62] In past actions it has recognized that ''by imposing a good faith obligation, Congress intended that the Commission develop and enforce a process'' conducive to good faith negotiations [63] rather than ''dictate the outcome'' of such negotiations.[64] We tentatively conclude the proposed blackout reporting requirements fall squarely within the Commission's oversight authority under both section 325(b)(3)(A) and section 325(b)(3)(C). Specifically, we tentatively find that timely notification about a blackout and access to accurate information about the surrounding circumstances is critical to carrying out our statutory mission. Reporting blackout information is the most efficient means for the Commission to obtain critical information needed to monitor ongoing blackout situations that could result in the filing of a retransmission consent complaint. Indeed, we expect that access to timely reporting information could result in tangible improvements to the retransmission consent negotiation process by allowing Commission intervention to get negotiations back on track if necessary, consistent with statutory requirements. In that way, protracted blackouts may be avoided. Thus, we tentatively find that requiring notification to the Commission when broadcast programming has gone dark on subscribers' MVPD service because of failed retransmission consent negotiations will allow the Commission to better govern the retransmission consent negotiation process as envisioned under the Communications Act.

31. The Commission also has broad information collection authority under section 403 of the Act, which grants the

[54] *Supra* paras. 12, 18.

[55] *Supra* para. 27.

[56] *Infra* Appendix B, paras. 5–25.

[57] Section 1 of the Communications Act of 1934 as amended provides that the FCC ''regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.'' 47 U.S.C. 151.

[58] The term ''equity'' is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 FR 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

[59] 47 U.S.C. 325(b)(3)(A).

[60] *Amendment of the Commission's Rules Related to Retransmission Consent,* MB Docket No. 10–71, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3371, para. 30 (2014).

[61] 47 U.S.C. 325(b)(3)(C).

[62] *Id.*

[63] *Good Faith Order,* 15 FCC Rcd at 5455, para. 24.

[64] *2011 Retrans Consent NPRM,* 26 FCC Rcd at 2721, para. 7 (quoting S. Rep. No. 92, 102nd Cong., 1st Sess. 1991, *reprinted in* 1992 U.S.C.C.A.N. 1133, 1169); *Good Faith Order,* 15 FCC Rcd at 5454–55, para. 23.

Commission discretion to require disclosures on matters, like retransmission consent, that fall within the Commission's jurisdiction.[65] We tentatively find that a retransmission consent-related blackout that lasts more than 24 hours warrants further inquiry by the Commission about the circumstances surrounding that blackout, to ensure that all parties are fulfilling their statutory obligation to negotiate in good faith. In addition, the Act grants the Commission broad authority to take the steps necessary to implement its mandates, and thus provides concurrent authority for the proposed blackout reporting rules. Sections 4(i) and 303 generally authorize the Commission to take any actions ''as may be necessary'' to ensure that the Commission can properly govern the retransmission consent negotiation process and thereby ensure that broadcasters and MVPDs fulfill their statutory obligation to negotiate retransmission consent in good faith.[66]

32. We also tentatively conclude that there is statutory support for the proposed reporting requirement in sections 632(b) and 335(a) of the Act.[67] Under section 632(b), the Commission can adopt customer service requirements for cable operators.[68] And, pursuant to section 335(a), the Commission has authority to impose on DBS providers public interest requirements for ''providing video programming,'' which we tentatively conclude includes reports on video programming blackouts.[69] In addition, we tentatively conclude that informing the Commission and the public about the availability of broadcast signals both serves the public interest and helps consumers make informed choices concerning video programming services. Blackout reporting will give the public greater visibility into the breadth and impact of blackouts arising from negotiation disputes and provide a reliable source of information about the entities most frequently involved in blackouts. We tentatively conclude that the proposed reporting requirements are customer service and public interest requirements that squarely fall within our authority under sections 632(b) and 335(a). As the Commission recently explained, ''Consumer access to clear, easy-to-understand, and accurate information is central to a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality services. The same information empowers consumers to choose services that best meet their needs and matches their budgets and ensures that they are not surprised by unexpected charges or service quality that falls short of their expectations.'' [70] These are some of the same goals that the proposed reporting requirements intend to accomplish. We seek comment on our authority to adopt blackout reporting requirements for cable operators and DBS providers under these provisions.

33. To the extent we adopt blackout reporting requirements for broadcasters, we tentatively conclude that our authority under Title III allows us to adopt such requirements to serve the public interest objectives stated above. Title III endows the Commission with ''expansive powers'' and a ''comprehensive mandate to 'encourage the larger and more effective use of radio in the public interest.' '' [71] This mandate is reinforced by section 307(b), which directs the Commission to ''provide a fair, efficient, and equitable distribution'' of service throughout the country.[72] Section 303 of the Act grants the Commission authority to establish operational obligations for licensees that further the goals and requirements of the Act if such obligations are necessary for the ''public convenience, interest, or necessity'' and are not inconsistent with other provisions of law.[73] In addition, sections 307 and 316 of the Act allow the Commission to authorize the issuance of licenses or adopt new conditions on existing licenses if such actions will promote public interest, convenience, and necessity.[74] Here, we tentatively conclude that the proposed reporting requirements would serve the public interest by informing the public about the availability of local broadcast signals on MVPD platforms and by providing the Commission and the public a systematic way to track broadcast station blackouts occurring on MVPD platforms. While some MVPD subscribers could replace the blacked out local broadcast signals with the broadcaster's own over-the-air transmission, not all subscribers would be able to do so because they either lack the necessary equipment or live in locations where they are unable to sufficiently receive the over-the-air

[65] 47 U.S.C. 403 (''The Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this chapter, or concerning which any question may arise under any provisions of this chapter, or relating to the enforcement of any of the provisions of this chapter.''); *Stahlman* v. *FCC,* 126 F.2d 124, 127 (D.C. Cir. 1942) (''[F]ull authority and power is given to the Commission with or without complaint to institute an inquiry concerning questions arising under the provisions of the Act or relating to its enforcement. This . . . includes authority to obtain the information necessary to discharge its proper functions, which would embrace an investigation aimed at the prevention or disclosure of practices contrary to public interest.'') (citing 47 U.S.C. 403); *Barrier Communications Corp.,* Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186, 10189, para. 8 (2020) (''Section 403 of the Communications Act . . . grants the Commission broad authority to conduct investigations and to compel entities to provide information and documents sought during investigations.''); *In re: James A. Kay, Jr.,* WT Docket No. 94–147, Memorandum Opinion and Order, 13 FCC Rcd 16369, 16372, para. 10 (1998) (''[U]nder 47 U.S.C. 403, the Commission enjoys wide discretion to initiate investigations with or without a complaint and has a responsibility to investigate where there is reason to believe that a licensee is violating the Commission's rules or policies.''). *See also* 47 CFR 1.1 (''The Commission may on its own motion or petition of any interested party hold such proceedings as it may deem necessary from time to time . . . for the purpose of obtaining information necessary or helpful in the determination of its policies, the carrying out of its duties or the formulation or amendment of its rules and regulations.'').

[66] *See* 47 U.S.C. 154(i) (authorizing the Commission to ''perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions''); 47 U.S.C. 303(r) (the Commission shall ''[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act''); 47 U.S.C. 325(b)(3)(A) (the Commission shall ''establish regulations to govern the exercise by television broadcast stations of the right to grant retransmission consent under this subsection . . .'').

[67] 47 U.S.C. 552(b), 335(a).

[68] *Id.* Section 552(b) (''The Commission shall . . . establish standards by which cable operators may fulfill their customer service requirements.'').

[69] *Id.* Section 335(a) (''The Commission shall . . . initiate a rulemaking proceeding to impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming.''). Although section 335(a) requires that the Commission adopt certain statutory political broadcasting requirements for DBS providers, the statute is clear that this list is not exhaustive. 47 U.S.C. 335(a) (''Any regulations prescribed pursuant to such rulemaking shall, *at a minimum,* apply the access to broadcast time requirement of section 312(a)(7) and the use of facilities requirements of section 315 to providers of direct broadcast satellite service . . .'') (emphasis added).

[70] *Empowering Broadband Consumers Through Transparency,* CG Docket No. 22–2, 2022 WL 17100958, Report and Order and Further Notice of Proposed Rulemaking, FCC 22–86, at *1, para. 1 (Nov. 17, 2022).

[71] *Cellco Partnership* v. *FCC,* 700 F.3d 534, 541–42 (D.C. Cir. 2012) (quoting *NBC* v. *United States,* 319 U.S. 190, 219 (1943) and 47 U.S.C. 303(g) (''The Commission from time to time, as public convenience, interest, or necessity requires, shall . . . (g) study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest[.]'')).

[72] 47 U.S.C. 307(b); *United States* v. *Southwestern Cable Co.,* 392 U.S. 157, 173–74 (1968) (''Congress has imposed upon the Commission the 'obligation of providing a widely dispersed radio and television service, with a fair, efficient, and equitable distribution' of service among the 'several States and communities.' '') (quoting S. Rep. No. 923, 86th Cong., 1st Sess. and 47 U.S.C. 307(b)).

[73] 47 U.S.C. 303.

[74] *Id.* Sections 307, 316; Cellco Partnership, 700 F.3d at 543.

transmission.[75] Therefore, over-the-air transmission of local broadcast signals may not be a reasonable substitute for the retransmission of local broadcast programming on MVPD platforms. We tentatively conclude that the proposed blackout reporting requirements would ''encourage the larger and more effective use of radio in the public interest'' and promote the fair, efficient, and equitable distribution'' of service throughout the country by informing the Commission and the public about the disruption of local broadcast signal carriage on MVPD platforms. Therefore, we tentatively conclude that it serves the public interest for the Commission and the public to have a centralized database to be able to systematically monitor obstacles to signal and programming availability. We seek comment on these and other potentially relevant sources of authority.

IV. Initial Regulatory Flexibility Analysis

34. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[76] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies proposed in the *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM.* The Commission will send a copy of the *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[77] In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.[78]

A. Need for, and Objectives of, the Proposed Rules

35. In the *NPRM,* the Commission considers and seeks comment on a proposal to impose reporting requirements for broadcast television station blackouts that occur as result of a retransmission consent dispute. Over the past decade, S&P Capital IQ data indicates that the number of blackouts resulting from unsuccessful retransmission consent negotiations has increased dramatically, causing service disruptions for consumers. The Commission usually learns of broadcast station blackouts through reports of disputes in the media or informal communication with staff, which does not allow the Commission or the public access to timely information on these service disruptions. Under this proposal, cable operators, satellite TV providers, and other multichannel video programming distributors (MVPDs) would be required to notify the Commission when a broadcast station blackout lasting over 24 hours occurs on their system. The proposed reporting framework would require public notice to the Commission of the beginning and resolution of any blackout and submission of confidential information about its scope. We tentatively conclude that this proposed rule would ensure that the Commission receives prompt and accurate information about critical broadcast service disruptions when they occur. The availability of this information would also help the Commission determine the extent of blackouts nationwide, identify recurring problems, determine whether actions can be taken to help prevent future blackouts from occurring, and identify any statistically meaningful trends across blackouts.

B. Legal Basis

36. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 552.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

37. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[79] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[80] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[81] 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.[82]

38. *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.[83] 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.[84] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[85] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[86]

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[75] *Supra* note 4.

[76] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[77] 5 U.S.C. 603(a).

[78] *Id.*

[79] 5 U.S.C. 603(b)(3).

[80] *Id.* Section 601(6).

[81] *Id.* Section 601(3) (adopting by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[82] 15 U.S.C. 632(a)(1).

[83] *See* U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[84] *Id.*

[85] *Id.*

[86] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

39. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[87] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[88] Of this number, 2,964 firms operated with fewer than 250 employees.[89] 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.[90] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[91] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

40. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide.[92] Based on industry data, there are about 420 cable companies in the U.S.[93] Of these, only seven have more than 400,000 subscribers.[94] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[95] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[96] Of these, about 639 have more than 15,000 subscribers.[97] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

41. *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.'' [98] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.[99] Based on industry data, only six cable system operators have more than 677,000 subscribers.[100] 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.[101] 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.

42. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises 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 telecommunications networks.[102] Transmission facilities may be based on a single technology or combination of technologies.[103] 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.[104] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[105]

43. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[106] U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year.[107] Of this number, 2,964 firms operated with fewer than 250 employees.[108] Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service, DIRECTV

[87] *See* 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[88] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[89] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[90] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), *https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.*

[91] *Id.*

[92] 47 CFR 76.901(d).

[93] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[94] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[95] 47 CFR 76.901(c).

[96] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[97] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022).

[98] 47 U.S.C. 543(m)(2).

[99] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 58.1 million. *See Communications Marketplace Report,* GN Docket No. 20–60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR 76.901(e)(1).

[100] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q* (last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[101] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR 76.910(b).

[102] U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[103] *Id.*

[104] *Id.* Included in this industry are: broadband internet service providers (*e.g.,* cable, DSL); local telephone carriers (wired); cable television distribution services; long-distance telephone carriers (wired); closed-circuit television (CCTV) services; VoIP service providers, using own operated wired telecommunications infrastructure; direct-to-home satellite system (DTH) services; telecommunications carriers (wired); satellite television distribution systems; and multichannel multipoint distribution services (MMDS).

[105] *Id.*

[106] 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[107] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[108] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

(owned by AT&T) and DISH Network, which require a great deal of capital for operation.[109] DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

44. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are included in the Wired Telecommunications Carriers' industry which includes wireline telecommunications businesses.[110] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[111] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[112] Of this total, 2,964 firms operated with fewer than 250 employees.[113] Thus under the SBA size standard, the majority of firms in this industry can be considered small.

45. *Home Satellite Dish (HSD) Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the industry category of Wired Telecommunications Carriers.[114] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[115] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year.[116] Of this total, 2,964 firms operated with fewer than 250 employees.[117] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

46. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers [118] is the closest industry with an SBA small business size standard.[119] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[120] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[121] Of this number, 2,964 firms operated with fewer than 250 employees.[122] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[123] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[124] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

47. *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.[125] Wired Telecommunications Carriers [126] is the closest industry with a 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.[127] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[128] Of this number, 2,964 firms operated with fewer than 250 employees.[129] 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.[130] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[131] Consequently, using the SBA's small business size standard,

[109] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eighteenth Report,* Table III.A.5, 32 FCC Rcd 568, 595 (Jan. 17, 2017).

[110] U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[111] 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[112] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[113] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[114] U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[115] 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[116] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[117] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[118] U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[119] 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[120] *Id.*

[121] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[122] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[123] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), *https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.*

[124] *Id.*

[125] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[126] U.S. Census Bureau, *2017 NAICS Definition, ''517311 Wired Telecommunications Carriers,'' https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[127] 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[128] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[129] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[130] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), *https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.*

[131] *Id.*

most of these providers can be considered small entities.

48. *Competitive Access Providers (CAPs).* Neither the Commission nor the SBA have developed a definition of small entities specifically applicable to CAPs. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers.[132] Under the SBA small business size standard a Wired Telecommunications Carrier is a small entity if it employs 1,500 employees or less.[133] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[134] Of that number, 2,964 firms operated with fewer than 250 employees.[135] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 659 CAPs and competitive local exchange carriers (CLECs), and 69 cable/coax CLECs that reported they were engaged in the provision of competitive local exchange services.[136] Of these providers, the Commission estimates that 633 providers have 1,500 or fewer employees.[137] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

49. *Open Video Systems.* The open video system (OVS) framework was established in 1996 and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. OVS operators provide subscription services and therefore fall within the SBA small business size standard for the cable services industry, which is ''Wired Telecommunications Carriers.'' [138] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[139] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[140] Of this total, 2,964 firms operated with fewer than 250 employees.[141] Thus, under the SBA size standard the majority of firms in this industry can be considered small. Additionally, we note that the Commission has certified some OVS operators who are now providing service and broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information for the entities authorized to provide OVS however, the Commission believes some of the OVS operators may qualify as small entities.

50. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' [142] transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).[143] Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.[144]

51. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite).[145] The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[146] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[147] Of this number, 2,837 firms employed fewer than 250 employees.[148] Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

52. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses.[149] The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has

[132] U.S. Census Bureau, *2017 NAICS Definition,* ''*517311 Wired Telecommunications Carriers,*'' *https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[133] 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[134] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[135] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[136] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), *https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.*

[137] *Id.*

[138] U.S. Census Bureau, *2017 NAICS Definition,* ''*517311 Wired Telecommunications Carriers,*'' *https://www.census.gov/naics/?input=517311&year=2017&details=517311.*

[139] 13 CFR 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[140] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, *https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[141] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[142] The use of the term ''wireless cable'' does not imply that it constitutes cable television for statutory or regulatory purposes.

[143] 47 CFR 27.4; *see also Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

[144] Generally, a wireless cable system may be described as a microwave station transmitting on a combination of BRS and EBS channels to numerous receivers with antennas, such as single-family residences, apartment complexes, hotels, educational institutions, business entities and governmental offices. The range of the transmission depends upon the transmitter power, the type of receiving antenna and the existence of a line-of-sight path between the transmitter or signal booster and the receiving antenna.

[145] U.S. Census Bureau, *2017 NAICS Definition,* ''*517312 Wireless Telecommunications Carriers (except Satellite),*'' *https://www.census.gov/naics/?input=517312&year=2017&details=517312.*

[146] 13 CFR 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[147] U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, *https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[148] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[149] Based on a FCC Universal Licensing System search on December 10, 2021, *https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp.* Search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = BR, ED; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years.[150] Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won four licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses.[151] One of the winning bidders claiming a small business status classification in the BRS license auction has an active license as of December 2021.[152]

53. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years.[153] In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

54. *Fixed Microwave Services.* Fixed microwave services include common carrier,[154] private-operational fixed,[155] and broadcast auxiliary radio services.[156] They also include the Upper Microwave Flexible Use Service (UMFUS),[157] Millimeter Wave Service (70/80/90 GHz),[158] Local Multipoint Distribution Service (LMDS),[159] the Digital Electronic Message Service (DEMS),[160] 24 GHz Service,[161] Multiple Address Systems (MAS),[162] and Multichannel Video Distribution and Data Service (MVDDS),[163] where in some bands licensees can choose between common carrier and non-common carrier status.[164] Wireless Telecommunications Carriers (*except* Satellite) [165] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[166] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[167] Of this number, 2,837 firms employed fewer than 250 employees.[168] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

55. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[169]

56. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

57. *Television Broadcasting.* This industry is comprised of ''establishments primarily engaged in broadcasting images together with sound.'' [170] These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.[171] These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small.[172] 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year.[173] Of that number, 657 firms

[150] 47 CFR 27.1218(a).

[151] Federal Communications Commission, Economics and Analytics, Auctions, Auction 86: Broadband Radio Service, Summary, Reports, All Bidders, *https://www.fcc.gov/sites/default/files/wireless/auctions/86/charts/86bidder.xls.*

[152] Based on a FCC Universal Licensing System search on December 10, 2021, *https://wireless2.fcc.gov/UlsApp/UlsSearch/searchAdvanced.jsp.* Search parameters: Service Group = All, ''Match only the following radio service(s)'', Radio Service = BR; Authorization Type = All; Status = Active. We note that the number of active licenses does not equate to the number of licensees. A licensee can have one or more licenses.

[153] 47 CFR 27.1219(a).

[154] 47 CFR part 101, subparts C and I.

[155] *Id.* Subparts C and H.

[156] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[157] 47 CFR part 30.

[158] 47 CFR part 101, subpart Q.

[159] *Id.* Subpart L.

[160] *Id.* Subpart G.

[161] *Id.*

[162] *Id.* Subpart O.

[163] *Id.* Subpart P.

[164] 47 CFR 101.533, 101.1017.

[165] U.S. Census Bureau, *2017 NAICS Definition, ''517312 Wireless Telecommunications Carriers (except Satellite),'' https://www.census.gov/naics/?input=517312&year=2017&details=517312.*

[166] 13 CFR 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[167] U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, *https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.*

[168] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[169] 47 CFR 101.538(a)(1)–(3), 101.1112(b)–(d), 101.1319(a)(1)–(2), and 101.1429(a)(1)–(3).

[170] *See* U.S. Census Bureau, *2017 NAICS Definition, ''515120 Television Broadcasting,'' https://www.census.gov/naics/?input=515120&year=2017&details=515120.*

[171] *Id.*

[172] 13 CFR 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

[173] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code

had revenue of less than $25,000,000.[174] Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

58. As of June 30, 2023, there were 1,375 licensed commercial television stations.[175] Of this total, 1,256 stations (or 91.3%) had revenues of $41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on July 17, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of June 30, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, 1,902 LPTV stations and 3,123 TV translator stations.[176] The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

59. The proposed rule would require all MVPDs carrying broadcast programming pursuant to retransmission consent agreements, including cable operators and DBS providers (Reporting MVPDs or, more broadly, Reporting Entities),[177] to notify the Commission of both the start and conclusion of a broadcast station blackout lasting over 24 hours. The initial notification would provide basic blackout information, both public and confidential, to the Commission within 48 hours of the start of a reportable broadcast station blackout (Initial Blackout Notification). The final notification, submitted no later than two business days after the end of the reportable broadcast station blackout, would publicly identify the date retransmission resumed (Final Blackout Notification). We propose that this information be collected through an online reporting portal designed, hosted, and administered by the Commission. Reporting Entities would be given notice of the specific reporting procedures by public notice before being required to submit blackout information via the reporting portal. Public blackout information collected through the portal would then be available on the Commission's website.[178]

60. To streamline reporting, the *NPRM* proposes creating an online reporting portal, modeled after the Commission's Network Outage Reporting System (NORS), which Reporting Entities would use to report broadcast station blackouts occurring on MVPD platforms.[179] The proposed data to be reported would be filed with the Commission via this web-based system. As with the Commission's Network Outage Reporting System (NORS), this system would use an electronic template to promote the ease of reporting and encryption technology to ensure the security of the information fields. The proposed blackout information to be reported would be available to the public, except for more sensitive information regarding subscribers, which Reporting Entities may designate as confidential.

61. The *NPRM* aims to tailor the proposed requirements so that they impose a minimal burden on small and other Reporting Entities while still ensuring that the Commission and the public have access to critical data on service disruptions. It is likely that small and other Reporting Entities already collect this information in the ordinary course of business for their internal use. As such, the operational cost of implementation associated with the proposed reporting requirements for small entities would be the time required to complete the two notifications. We anticipate that electronic submission through the reporting portal will minimize the amount of time and effort that will be required to complete the proposed reporting obligations.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

62. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' [180]

63. The *NPRM* considers certain alternatives that may impact small entities. One such alternative discussed is whether mandatory blackout reporting is necessary and if voluntary reporting could support the Commission's efforts to stay informed on the frequency and impact of broadcast station blackouts. The *NPRM* concludes that based on experience with voluntary reporting in other contexts, this would likely create substantial gaps in data that would significantly impair the Commission's efforts and therefore not sufficiently serve the information collection purposes of this reporting initiative. The *NPRM* also considers the timeliness of the Final Blackout Notification reporting the resumption of carriage when multiple stations are involved in a blackout and whether Reporting Entities must report the partial end of a blackout as carriage for each station resumes, or report only after the dispute has been resolved for all the stations included in the Initial Blackout Notification.

64. We anticipate that complying with the proposed reporting requirements will create a minimal administrative burden on small entities and that, on balance, the benefits of compiling this information on service disruptions would outweigh any potential burden. We expect that Reporting Entities will have ready access to the basic blackout information that is proposed to be

515120, *https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.*

[174] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.*

[175] *Broadcast Station Totals as of June 30, 2023,* Public Notice, DA 23–582 (rel. July 14, 2023) (*July 2023 Broadcast Station Totals PN*), *https://docs.fcc.gov/public/attachments/DA-23-582A1.pdf.*

[176] *Id.*

[177] 47 CFR 76.64(d) (''A multichannel video program distributor is an entity such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, or a satellite master antenna television system operator, that makes available for purchase, by subscribers or customers, multiple channels of video programming.''); *infra* Appendix A—Proposed Rules, § 76.68(c)(1).

[178] *Supra NPRM,* Appendix A—Proposed Rules.

[179] Federal Communications Commission, *Network Outage Reporting System (NORS), https://www.fcc.gov/network-outage-reporting-system-nors* (last updated Mar. 25, 2022).

[180] 5 U.S.C. 603(c)(1)–(4).

included in the required notices—when and where the blackout occurred and what subscribers were affected. As a result, we believe that, in the normal course of operations, the only potential burden associated with the reporting requirements contained in this *NPRM* will be the time required to complete the Initial and Final Notifications. We also anticipate that electronic submission should minimize the amount of time and effort that will be required to comply with the rule proposed in this *NPRM.* In addition, we do not anticipate that it will be costly or time consuming for Reporting Entities to fill out and submit the proposed notifications, each of which is quite brief. Given this reporting framework, we expect that the economic impact on small entities is not likely to be significant, and therefore believe that the proposed process is reasonable in light of the benefits to the Commission, Congress, and the public from having timely access to important and accurate information on service disruptions.

65. The *NPRM* seeks comment on the types of burdens small entities will face in complying with the proposed requirements and invites commenters to quantify that burden and recommend how to mitigate it.[181] To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions that have been proposed in the *NPRM,* and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated with the reporting requirements described above can be minimized for small entities. Entities, especially small businesses and small entities, are encouraged to quantify the costs and benefits of the proposed reporting requirements. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the *NPRM.*

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

66. None.

V. Procedural Matters

67. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[182] 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.'' [183] Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible/potential impact of the rule and policy changes contained in this *NPRM.* The IRFA is attached as Appendix B. Written public comments are requested on the IRFA. Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the first page of this document.

68. *Initial Paperwork Reduction Act Analysis.* This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.[184] In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.[185]

69. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.[186] Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking on: *https://www.fcc.gov/proposed-rulemakings.*

70. *Ex Parte Rules—Permit-But-Disclose.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[187] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

IV. Ordering Clauses

71. *It is ordered,* pursuant to the authority found in sections 1, 4(i), 4(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 632 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303(b), 303(g), 303(j), 303(r), 303(v), 307, 309, 316, 325, 335(a), 403, and 552, that this Notice of Proposed Rulemaking IS HEREBY ADOPTED.

72. *It is further ordered* that the Commission's Office of the Secretary SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Television.

[181] *NPRM* at para. 28.

[182] *See* 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[183] *Id.* Section 605(b).

[184] The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 of the U.S. Code).

[185] The Small Business Paperwork Relief Act of 2002 (SBPRA), Public Law 107–198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 of the U.S. Code). *See* 44 U.S.C. 3506(c)(4).

[186] 5 U.S.C. 553(b)(4). The Providing Accountability Through Transparency Act, Public Law 118–9 (2023), amended section 553(b) of the Administrative Procedure Act.

[187] 47 CFR 1.1200 *et seq.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISON SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Add § 76.68 to Subpart D to read as follows:

§ 76.68 Reporting Requirements for Commercial Television Broadcast Station Blackouts.

(a) *Information Required.* All information must be submitted to the Commission electronically in accordance with procedures specified by the Media Bureau by public notice.

(1) In the event of a Broadcast Station Blackout lasting over 24 hours, the Reporting Entity shall, within 48 hours of the initial interruption to programming, submit an Initial Blackout Notification. This Notification will be available to the public and shall identify:

(i) The name of the Reporting Entity;

(ii) The commercial television broadcast station or stations no longer being retransmitted, including network affiliation(s), if any, of each affected primary and multicast stream;

(iii) The name of the broadcast station group, if any, that owns the commercial television broadcast station(s)

(iv) The Designated Market Area(s) in which affected subscribers reside;

(v) The date and time of the initial interruption to programming; and

(vi) The number of subscribers affected.

(2) No later than 2 business days after the resumption of carriage to subscribers, the Reporting Entity shall submit a Final Blackout Notification. This Notification will be available to the public and shall state, with respect to each station identified in the Initial Blackout Notification, that retransmission has resumed and include the date on which retransmission resumed.

(b) *Confidential Treatment.* Reporting Entities may request that subscriber data submitted pursuant to paragraph (a)(1)(vi) of this section be treated as confidential and be withheld from public inspection by so indicating on the notice at the time that they submit such data. Reporting Entities seeking confidential treatment of any other data requested pursuant to paragraphs (a)(1)(i) through (v) of this section must submit a request that the data be treated as confidential with the submission of the Initial Blackout Notification, along with their reasons for withholding the information from the public, pursuant to § 0.459 of this chapter.

(c) *Definitions.*

(1) *Reporting Entity.* The entity reporting a Broadcast Station Blackout.

(2) *Broadcast Station Blackout.* Any time an MVPD ceases retransmission of a commercial television broadcast station's signal due to a lapse of the broadcast station's consent for such retransmission.

(3) *Commercial Television Broadcast Station.* For the purposes of this section, a ''commercial television broadcast station'' includes all commercial full power, class A, and low power television broadcast stations.

[FR Doc. 2024–01505 Filed 1–25–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 18
Friday, January 26, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

AI in Global Development Playbook

AGENCY: United States Agency for International Development (USAID)

ACTION: Notice; request for information.

SUMMARY: The United States Agency for International Development and the U.S. Department of State, in coordination with the National Institute of Standards and Technology (NIST), seek information to assist in carrying out responsibilities under Executive Order 14110 on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence issued on October 30, 2023. Specifically, the E.O. directs USAID and the State Department to publish an AI in Global Development Playbook that incorporates NIST's AI Risk Management Framework's principles, guidelines, and best practices into the social, technical, economic, governance, human rights, and security conditions of contexts beyond United States borders.

DATES: Comments containing information in response to this notice must be received on or before March 1, 2024. Submissions received after that date may not be considered.

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

Sent as an attachment to *emergingtech@usaid.gov* in any of the following unlocked formats: HTML; ASCII; Word; RTF; Unicode, or .pdf.

Written comments may be submitted by mail to: USAID, IPI/ITR/T, Rm. 2.12–213, RRB, 1300 Pennsylvania Avenue NW, Washington, DC 20004.

Response to this RFI is voluntary. Submissions must not exceed 10 pages (when printed) in 12-point or larger font, with a page number provided on each page. Please include your name, organization's name (if any), and cite ''AI in Global Development Playbook'' in all correspondence.

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. All comments and submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure.

USAID will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Andrew Merluzzi, *emergingtech@usaid.gov* or 1–802–558–5397.

Accessible Format: USAID will make the RFI available in alternate formats, such as Braille or large print, upon request by persons with disabilities.

SUPPLEMENTARY INFORMATION: To promote safe, responsible, and rights-affirming development and deployment of AI abroad, the Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence directs:

''*The Secretary of State and the Administrator of the United States Agency for International Development, in coordination with the Secretary of Commerce, acting through the director of NIST, [to] publish an AI in Global Development Playbook that incorporates the AI Risk Management Framework's principles, guidelines, and best practices into the social, technical, economic, governance, human rights, and security conditions of contexts beyond United States borders. As part of this work, the Secretary of State and the Administrator of the United States Agency for International Development shall draw on lessons learned from programmatic uses of AI in global development.*

USAID and the State Department are seeking information to assist in carrying out this action.

With the right enabling environment, ecosystem of market actors, and investments, AI technologies can foster greater efficiency and accelerated development results across a variety of sectors and contexts, whether in agriculture, health, education, energy, etc. Addressing the risks presented by AI technologies is essential to fully harnessing their benefits. Understanding these risks across a range of geographic and cultural contexts requires the expertise of local communities, the private sector, civil society, governments, and other stakeholders.

The AI in Global Development Playbook aims to characterize the risks and opportunities of AI in Global Majority countries (sometimes referred to as low- and middle-income countries, developing countries, or the ''Global South''), and will provide guidance for various stakeholders—organizations building, deploying, and using AI; private sector; governments; and others—to address those risks and leverage opportunities to drive AI applications for sustainable development. This RFI is an attempt to collect various research products, experiences, and perspectives that will inform the Playbook and speak to the unique risks and benefits of the use of AI technologies in Global Majority countries, including concrete examples of successes, hurdles, and roadblocks.

AI ecosystems are the stakeholders, systems, and an enabling environment that empower people and communities to build and use AI tools responsibly, as well as to respond to the use of AI technologies in their contexts. While no two AI ecosystems are identical, there are broad characteristics that many ecosystems share or upon which they differ. Feedback on this RFI will help illuminate the most impactful ecosystem factors and inform how best to navigate those factors to advance a responsible approach to AI.

In considering information for submission, respondents are encouraged to review resources that USAID, State Department, and NIST have developed or coordinated with partners to develop in the past:

- USAID Digital Ecosystem Framework
- USAID AI Action Plan
- Reflecting the Past, Shaping the Future: Making AI Work for International Development
- NIST AI Risk Management Framework
- OECD Working Party on AI Governance
- Global Partnership on AI
- OECD Recommendation on AI

- Hiroshima Process Code of Conduct for Organizations Developing Advanced AI Systems

1. Questions for the AI in Global Development Playbook

USAID and State Department are interested in receiving information pertinent to any or all of the topics described below. Respondents may provide information on one or more of the topics in this RFI and may elect not to address every topic.

Please answer based on your experience, the positions of your organization, or research you have encountered or conducted. Where possible, please cite the source of your information or note when personal views are expressed.

Information that is specific and actionable is of special interest. Copyright protections of materials, if any, should be clearly noted. USAID and the State Department are especially interested in the perspectives of those living and/or working in Global Majority countries, though responses are welcome from anyone.

The Opportunities, Risks, and Barriers of AI

1. What are the most important barriers in Global Majority countries to achieving a future where AI tools are designed and deployed in a responsible way to address the UN Sustainable Development Goals (SDGs) and support humanitarian assistance. How would you address these barriers?

2. What applications of AI or AI technologies are most promising for advancing the SDGs and supporting humanitarian assistance? How can these applications be advanced responsibly? Are there any sectors that are particularly well suited to applications of AI? Are there potential limitations or trade-offs that should be considered when applying AI in these contexts?

3. Relatedly, what are the most risky or harmful applications of AI in Global Majority countries? Why? Can their risks or harms be mitigated, and if so, how?

4. How are commercially available AI tools currently helpful in addressing the SDGs and supporting humanitarian assistance? Where do they fall short or lead to harm? What steps have or should be taken to mitigate such harms?

5. How do AI's potential benefits and risks differ for specific groups (particularly disadvantaged or marginalized groups) and between geographic and cultural contexts?

The Enabling Environment for Responsible AI

6. How should data for AI systems be collected, used, stored, managed, and owned to further the SDGs and support humanitarian goals? Which aspects of data management are unique or particularly salient for AI? How should the objective of ensuring sufficient data accessibility for AI training be reconciled with other objectives, such as ensuring privacy protections, in different contexts?

7. What kind of AI-related financial and resource investments should actors in Global Majority countries prioritize to achieve the SDGs and support humanitarian assistance? What kinds of financing and resourcing is most needed to catalyze responsible AI development?

8. How should computational resources (''compute'') to build or deploy AI systems be managed in Global Majority countries? How could compute be more accessible, affordable, and reliable? How should hardware and infrastructure to support the deployment of AI systems be managed and governed?

9. What are the barriers to building the AI workforce in Global Majority contexts, including for tasks beyond technical development of AI systems? What kinds of skills or experience are most needed in these contexts? Where can people gain these skills and experiences?

10. What other AI-enabling infrastructure or resources are needed to advance responsible AI development and use?

AI Policy, Protections, and Public Participation

11. Are there existing AI principles, tools, or best practices that you think are particularly helpful in advancing AI for development in a risk-aware manner? If they are only partly helpful, where do they fall short?

12. What kinds of AI-related policies do you think are most promising (or harmful) in Global Majority contexts? Why? Who might these policies benefit, and who might they harm? How might existing policies be reshaped for improved outcomes?

13. How might AI affect broader labor-market dynamics in your context? Are there some skills for which it increases demand, and others for which it decreases demand?

14. How might AI affect competition dynamics in your context? Do these effects vary by economic sector?

15. How should the public be informed about AI risks and harms in your context, and engaged on AI governance issues? What efforts around community engagement seem promising? What communities should be engaged who are not part of existing discussions?

16. What are the best ways to improve inclusivity and stakeholder representation in AI design, deployment, governance, or policymaking in the context of global development (at the global, regional, and local levels)?

17. What are best practices for ensuring human rights are respected and protected in the development, deployment, and use of AI in the context of a risk-based approach to AI governance? Are there mechanisms, processes, and capacity in place to hold actors accountable for harms resulting from AI systems in your context? What should be done to create and operationalize those accountability mechanisms, and ensure their sustainability?

18. Please list any other organizations you think should be consulted as the AI in Global Development Playbook is developed (please note it may not be possible to consult with every organization).

Authority: Executive Order 14110 of Oct. 30, 2023.

Signing Authority

This document of the United States Agency for International Development was signed on January 24, 2024, by Andrew Merluzzi, Emerging Technology Advisor, USAID. That document with the original signature and date is maintained by USAID. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned USAID Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the USAID. This administrative process in no way alters the legal effect of this document on publication in the **Federal Register**.

Signed in Washington, DC, on January 24, 2024.

Andrew Merluzzi,

Emerging Technology Advisor, USAID.

[FR Doc. 2024–01707 Filed 1–25–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Seek Approval To Collect Information

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Agricultural Research Service's intent to conduct focus groups to understand insights and experiences of manureshed managers.

DATES: Comments on this notice must be received by March 26, 2024 to be assured of consideration.

Comments: You may submit comments by emailing Sarah Beebout at *Sarah.Beebout@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Sheri Spiegal at 415–264–2906, *Sheri.Spiegal@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Focus Groups to Understand Insights and Experiences of Manureshed Managers.

OMB Number: 0518–XXXX.

Expiration Date: Three years from approval date.

Type of Request: Approval for focus groups.

Abstract: This is a request, made by ARS National Program Leader and ARS Rangeland Management Specialist, that the OMB approve, under the Paperwork Reduction Act of 1995, a 1-year generic clearance for the ARS to conduct focus groups to understand the perspectives and experiences of agricultural and natural resource professionals who facilitate collaborative ''manureshed'' management. A manureshed is the land geographically and economically connected to confined animal feeding operations where manure from the operations can be recycled to meet social, economic, and environmental goals. The USDA–ARS Manureshed Working Group will use focus group results to design research and extension activities that address the knowledge gaps and opportunities illuminated by practitioners on the ground.

Description of Focus Groups

Five focus groups will be held in three states for a total of 15 sessions. At each focus group meeting, facilitators will follow a predetermined research instrument consisting of a preamble, a presentation of materials, and 13 interactive questions. Each focus group meeting is expected to last up to 2 hours and comprise 10 or fewer participants not counting facilitators.

Estimate of Burden

Responding to an invitation for a focus group meeting is estimated to take 3 minutes. If the respondent agrees to attend, the participant will spend 120 minutes (2 hours) at the meeting.

Respondents: Animal farmers, crop farmers, manure professionals, natural resource management professionals, and other stakeholders who each have a key role in facilitating manureshed management in Colorado, Minnesota, and New Mexico.

Estimated Number of Respondents: 300.

Estimated Total Annual Burden on Respondents: 315 hours.

Comments

Manure management poses grand challenges for modern agriculture. While surplus manure nutrients exist in some places, great deficits persist in others. This uneven distribution can harm ecosystems, social systems, and producers' bottom lines. Recycling manure nutrients from areas of surplus to agricultural fields in need is a traditional approach that has become increasingly difficult as agriculture has become specialized, with crops and animals increasingly grown on separate farms, and concentrated, with specialized crop and animal farms consolidating in certain areas of the U.S. landscape. Manuresheds bridge the gaps between otherwise disparate components of modern agriculture.

The USDA-Agricultural Research Service (USDA–ARS) Manureshed Working Group was founded in 2018 to develop viable strategies for cooperative manure management. The group comprises federal and university researchers at ten sites across the United States and Canada in the USDA–ARS Long-Term Agroecosystem Research Network, along with members from producer groups, federal action agencies, cooperative extension, private manure management entities, and animal industry groups. The Manureshed Working Group has begun to define the issues and describe potential solutions using its own research-based and extension-based knowledge with geospatial mapping and modeling.

Despite the new understanding developed by the working group, much remains unknown about how manuresheds can be managed for desirable outcomes for all stakeholders involved. The variability of animal manures, the complexity of agricultural systems, the social separation of different types of farmers, and persistent technological challenges create social, economic, and technological barriers to manureshed management in the United States—some of which are barely understood. The next critical step for manureshed researchers is to engage directly with people on the ground who recycle manure, to incorporate their insights into targeted, solutions-oriented research and extension.

At each focus group, facilitators will first present materials and then ask 13 interactive questions related to the materials:

Facilitators present manureshed maps and diagrams on PowerPoint projector and in handouts:

1. Map of manureshed originating from animal farms in focal manure ''source'' county. Depending on focus group location, map will represent Chavez County, New Mexico; Weld County, Colorado; or Morrison County, Minnesota.

2. Map of trans-regional manureshed originating from the region containing the focal source county.

3. Conceptual diagram of manureshed management: components and actors.

Facilitators ask interactive focus group questions:

1. What is your role in the manureshed system? How long have you been in this role? [Display ''Conceptual Diagram of Manureshed Management'']

2. What is the spatial scale of the manureshed that you operate in?

3. Manure starts with feed, grown locally or imported. Please tell me about the feed ration in your area. Of the total feed supplied, what approximate percent is forages? Grains? Pasture usage? Where does animal feed in your manureshed come from originally?

4. What factors drive the decision-making of the suppliers and recipients about where manure is redistributed? [Prompt: Examples include soil type, land ownership, trucking infrastructure, social networks, friendship, cropping, water availability for crop or range, diesel price, weather, urban encroachment, contaminants, local technologies for manure transformation and transport, and availability of information.]

5. What is a ''point of pride'' or best aspect of manure/nutrient management in your manureshed? What is the most worrisome aspect of manure/nutrient management in your manureshed?

6. In general, what factors or systems make it easy to redistribute manure from places of surplus to agricultural fields in need? What are the barriers?

7. In general, what is the percentage of manure that stays on animal farms vs. manure exported to other properties? How far does manure generally travel off the farm? How is it transported? Does the distribution shown in the ''Map of Manureshed Originating from Animal Farms'' reflect what you see in your area?

8. Who are the main suppliers and recipients of transported manure? How do the suppliers and recipients know each other? Is a broker or other intermediary involved in manure exchange? Have you ever heard about the need to supply or receive more manure without a recipient or supplier?

9. Is the market value of manure correct? What creates the value, recognizing this could be a negative price for situations where there is a cost for manure to be removed? Are there ways to improve/create functional manure markets? Does anyone have plans to shift manure management to participate in carbon markets?

10. What are the main types of manure treatment and storage technologies available? Are there technical innovations (*e.g.,* solid separators, chemical amendments, vermiculture, biochar, digesters) that anyone is considering? What research is needed on these? Is financing available?

11. Tell me about the role of regulations. Which seem reasonable or appropriate for maintaining environmental health and social wellbeing in your manureshed? Are there any changes you would make to these regulations to improve efficiency?

12. What are your pie-in-the-sky nutrient recycling dreams? What would your ideal form of manure nutrient recycling look like if no barriers existed? Without barriers, what spatial scale would you operate at? For instance, would the vision in the ''Map of Trans-Regional Manuresheds'' come into play? [Prompt: Would that dream entail local manure recycling or commercialization of standardized manure nutrient products or something else entirely?]

13. What type of information is necessary for collaborative manureshed management to be effective/possible? If you want information on nutrient management, who do you turn to?

The USDA–ARS Manureshed Working Group will use focus group results to design research that addresses the knowledge gaps and opportunities illuminated by practitioners on the ground. For example, if focus groups in a state reveal that land use change is a major hindrance to successful manureshed management, subsequent research and extension in that state will focus on that issue. If focus groups reveal that a lack of social relationships between animal farmers with surplus manure and crop farmers who could use it, the ensuing research and extension would focus thusly. This honing of research, designed to support practitioners, is impossible without learning from practitioners directly. Focus group results will also direct extension activities in each state, structuring future discussions among the otherwise-disparate focus group populations with an eye toward advancing collaborative management opportunities. This proposed work is a form of ''participatory action research'' in which researchers and stakeholders work together to examine an issue and change it for more desired outcomes.

Jeffrey Silverstein,

Acting Associate Administrator, ARS.

[FR Doc. 2024–01506 Filed 1–25–24; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Record of Decision for the Ashley National Forest Land Management Plan

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of approval of the revised land management plan for the Ashley National Forest.

SUMMARY: Susan Eickhoff, the Forest Supervisor for the Ashley National Forest, Intermountain Region, signed the final record of decision (ROD) for the Ashley National Forest revised Land Management Plan (LMP). The final ROD documents the rationale for approving the revised LMP and is consistent with the Reviewing Officer's responses to objections and instructions.

DATES: The revised LMP for the Ashley National Forest will become effective 30 days after the publication of this notice of approval in the **Federal Register** (36 CFR 219.17(a)(1)).

ADDRESSES: To view the final ROD, final environmental impact statement (FEIS), revised LMP, and other related documents, please visit the Ashley National Forest project page at: *https://www.fs.usda.gov/project/?project=49606,* or visit the Forest's planning website at: *https://www.fs.usda.gov/main/ashley/landmanagement/planning.*

A legal notice of approval is also being published in the newspaper of record, *The Vernal Express* (Vernal, Utah). A copy of this legal notice will be posted on the Ashley National Forest's website described above.

FOR FURTHER INFORMATION CONTACT: Lars Christensen, Collaboration Specialist, Ashley National Forest; email *lars.christensen@usda.gov* or call 435–781–5126.

Individuals who use telecommunication devices for the deaf or hard of hearing (TDD) may call the Federal Relay Service at 1–800–877–8339, 24 hours a day, every day of the year, including holidays. Written requests for information may be sent to Ashley National Forest, Attn: Ashley National Forest Plan Revision, 355 North Vernal Ave., Vernal, UT 84078.

SUPPLEMENTARY INFORMATION: The Ashley National Forest covers more than 1.4 million acres across seven counties in northeastern Utah and southwestern Wyoming. The LMP was developed pursuant to the 2012 Forest Service Planning Rule (36 CFR 219) and will replace the 1986 LMP. The LMP describes desired conditions, objectives, standards, guidelines, and land suitability for project and activity decision-making and will guide all resource management activities on the Forest. The Ashley National Forest plays an important role supporting and partnering with communities in northeastern Utah and southwestern Wyoming by providing economic benefits including fuelwood gathering, livestock grazing, and abundant recreational opportunities. The development of the LMP was shaped by the best available scientific information, current laws, and public input.

The Ashley National Forest initiated plan revision in 2016 and engaged the public frequently throughout the process. This engagement effort has included conventional public meetings, collaborative work sessions and technical meetings, information sharing via social media, and working with cooperating agencies. The Forest invited State, local, and Tribal governments, and other Federal agencies from around the region to participate in the process to revise the LMP. The Forest engaged in government-to-government consultation with two Tribes during LMP revision, ensuring tribal-related plan direction accurately reflects the Ashley National Forest's trust responsibilities and government-to-government relationship with tribes. An Ashley National Forest-Ute Indian Tribal Task Force met regularly throughout the plan revision effort. During the 90-day comment period November 2021 through February 2022 for the draft LMP and draft EIS, the Ashley National Forest received 191

comment letters which helped refine the preferred alternative and augment plan content based on response to comments.

A draft ROD, LMP, and FEIS were released on April 19, 2023, initiating a 60-day objection filing period that closed June 20, 2023. The Ashley received 15 eligible objections, two of which were for species of conservation concern. Through a comprehensive review of each objection, a variety of issues were identified. Following the objection review, the Reviewing Officer held an objection resolution meeting with objectors and interested persons. Based on these meetings, the Reviewing Officer for the LMP issued a written response on November 14, 2023, and the Reviewing Officer for species of conservation concern issued a written response on November 17, 2023. The instructions from the Reviewing Officer were addressed in the ROD, LMP, and FEIS.

Responsible Officials

The Responsible Official for approving the revised LMP is Susan Eickhoff, Forest Supervisor, Ashley National Forest. The Responsible Official approving the list of species of conservation concern is Mary Farnsworth, Regional Forester, Intermountain Region.

Dated: January 19, 2024.

Troy Heithecker,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024–01573 Filed 1–25–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket No. RBS–24–CO–OP–0001]

Notice of a Revision to a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBCS or Agency), an agency within the United States Department of Agriculture, Rural Development, intention to request a revision to a currently approved information collection package for the Agriculture Innovation Center Demonstration Program (AIC). In accordance with the Paperwork Reduction Act of 1995, the Agency invites comments on this information collection for which it intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by March 26, 2024 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Pamela Bennett, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9639. Email *pamela.bennett@usda.gov.*

SUPPLEMENTARY INFORMATION: The OMB regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RBCS is submitting to OMB for revision to an existing collection.

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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RBS–24–CO–OP–0001. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''Comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom.

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, failure to provide data could result in program benefits being withheld or denied.

Title: Agriculture Innovation Center Demonstration Program.

OMB Control Number: 0570–0045.

Type of Request: Revision to a currently approved information collection.

Abstract: The USDA, through the RBCS administers the Agriculture Innovation Center Demonstration (AIC) Program. The primary objective of this program is to provide funds to Agriculture Innovation Centers (Centers) which provide agricultural producers with technical and business development assistance. RBCS collects information from applicants to confirm eligibility for the program and to evaluate the quality of the applications. Recipients of awards are required to submit reporting and payment request information to facilitate monitoring of the award and disbursement of funds. The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorized the Secretary of the U.S. Department of Agriculture (USDA) to award grant funds to Centers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 11.736 hour per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 29.

Estimated Total Annual Responses: 109.

Estimated Number of Responses per Respondent: 3.75.

Estimated Total Annual Burden on Respondents: 1,279 Hours.

Copies of this information collection can be obtained from Pamela Bennett, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9639. Email: *pamela.bennett@usda.gov.*

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Christopher McLean,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2024–01581 Filed 1–25–24; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom at 3:00 p.m. MT on Wednesday, February 28, 2024. The purpose of the meeting is to discuss the Committee's project, *The Civil Rights Implications of Disparate Outcomes in Utah's K–12 Education System.*

DATES: Wednesday, February 28, 2024, from 3:00 p.m.–4:00 p.m. Mountain Time.

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/s/1613257635.

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 325 7635.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Utah Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Discussion: Civil Rights Implications of Disparate Outcomes in Utah's K–12 Education System
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: January 23, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–01604 Filed 1–25–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Quarterly Financial Report

AGENCY: Census Bureau, Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, 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 on the proposed extension of the Quarterly Financial Report, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before March 26, 2024.

ADDRESSES: Interested persons are invited to submit written comments by email to *Thomas.J.Smith@census.gov.* Please reference the Quarterly Financial Report in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2024–0002, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Brandi Hanley, Branch Chief, Quarterly Financial Branch, Economic Indicators Division, (301) 763–7405, and *brandi.hanley@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is planning to resubmit to the Office of Management and Budget for approval of the Quarterly Financial Report (QFR) program information collection forms. The QFR forms to be submitted for approval are: The QFR 200 (MT) long form (manufacturing, mining, wholesale trade, and retail trade); QFR 201 (MG) short form (manufacturing); and the QFR 300 (S) long form (information services and professional and technical services). The Census Bureau is not requesting any changes to the current forms.

The QFR program collects and publishes up-to-date aggregate statistics

on the financial results and position of U.S. corporations. The QFR target population consists of all corporations engaged primarily in manufacturing with total assets of $5 million and over, and all corporations engaged primarily in mining; wholesale trade; retail trade; information; or professional and technical services (except legal services) industries with total assets of $50 million and over.

The QFR program is a principal federal economic indicator that has published up-to-date aggregate statistics on the financial results and position of U.S. corporations since 1947. The QFR provides critical source data to the Bureau of Economic Analysis' (BEA) quarterly estimates of Gross Domestic Product (GDP) and Gross Domestic Income (GDI), key components of the National Income and Product Accounts (NIPA). The QFR data are also vital to the Federal Reserve Board's (FRB) Financial Accounts. Title 13 of the United States Code, Section 91 requires that financial statistics of business operations be collected and published quarterly. Public Law 114–72 extended the authority of the Secretary of Commerce to conduct the QFR Program under Section 91 through September 30, 2030.

The main purpose of the QFR is to provide timely, accurate data on business financial conditions for use by government and private-sector organizations and individuals. Primary public users include U.S. governmental organizations with economic measurement and policymaking responsibilities such as the Bureau of Economic Analysis, the Bureau of Labor Statistic, and the Federal Reserve Board. In turn, these organizations provide guidance, advice, and support to the QFR program. The primary non-governmental data users are a diverse group including universities, financial analysts, unions, trade associations, public libraries, banking institutions, and U.S. and foreign corporations.

II. Method of Collection

The Census Bureau uses two forms of data collection: mail out/mail back paper survey forms and a secure encrypted internet data collection system called Centurion. Centurion has automatic data checks and is context-sensitive to assist respondents in identifying potential reporting problems before submission, thus reducing the need for follow-up from Census Bureau staff. Data collection through Centurion is completed via the internet, eliminating the need for downloading software and ensuring the integrity and confidentiality of the data.

Companies are asked to respond to the survey within 25 days of the end of the quarter for which the data is being requested. Census Bureau staff contact companies that have not responded by the designated time through letters, telephone calls, and/or email to encourage participation.

III. Data

OMB Control Number: 0607–0432.

Form Number(s): QFR 200 (MT), QFR 201 (MG), and QFR 300 (S).

Type of Review: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Affected Public: Business or other for-profit organizations; Manufacturing corporations with assets of $5 million or more and Mining, Wholesale Trade, Retail Trade, Information, Professional, Scientific, and Technical Services (excluding legal) with assets of $50 million or more.

Estimated Number of Respondents:

Form QFR 200 (MT)—4,300 per quarter = 17,200 annually
Form QFR 201 (MG)—2,750 per quarter = 11,000 annually
Form QFR 300 (S)—1,500 per quarter = 6,000 annually
Total 34,200 annually

Estimated Time per Response:

Form QFR 200 (MT)—Average hours 3.0
Form QFR 201 (MG)—Average hours 1.2
Form QFR 300 (S)—Average hours 3.0

Estimated Total Annual Burden Hours: 82,800 hours.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 91 and 224.

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. 2024–01596 Filed 1–25–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–841]

Mattresses From Thailand: Preliminary Results of the Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that Saffron Living Co., Ltd. (Saffron), the sole producer/exporter subject to this administrative review made sales of subject merchandise at prices below normal value during the period of review (POR) May 1, 2022, through April 30, 2023. We invite interested parties to comment on these preliminary results.

DATES: Applicable January 26, 2024.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative

review of the order [1] for the period May 1, 2022, through April 30, 2023.[2] In May 2023, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213(b)(1), Commerce received requests to conduct an administrative review of Saffron from: (1) the petitioners; [3] and (2) Saffron.[4] On July 12, 2023, based on these timely requests for administrative review, Commerce initiated this administrative review with respect to Saffron.[5] On August 10, 2023, Saffron timely withdrew its request for administrative review.[6]

For a more complete description of the events between the initiation of this review and these preliminary results, *see* the Preliminary Decision Memorandum.[7]

Scope of the Order

The products covered by the *Order* are mattresses from Thailand. For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. In reaching these preliminary results, Commerce relied on facts otherwise available, with adverse inferences, in accordance with sections 776(a) and (b) of the Act. A list of topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Preliminary Results of Review

We preliminary determine that the following estimated weighted-average dumping margin exists for the period May 1, 2022, through April 30, 2023.

Producer and/or exporter	Weighted-average dumping margin (percent)
Saffron Living Co., Ltd	763.28

Disclosure and Public Comment

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with the preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of the preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce has preliminarily determined to apply AFA to Saffron, there are no calculations to disclose.

Pursuant to 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[8] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[9] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[10]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[11] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination in this investigation. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. All submissions, including case and rebuttal briefs, as well as hearing requests, should be filed using ACCESS.[13] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Assessment Rates

Upon completion of the final results of this administrative review, pursuant to section 751(a)(2)(A) of the Act, Commerce shall determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise covered by this review.[14]

If Saffron's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we intend to calculate an importer-specific assessment rate for antidumping duties based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If Saffron's weighted-average dumping margin or an

[1] *See Mattresses from Cambodia, Indonesia, Malaysia, Serbia, Thailand, the Republic of Turkey, and the Socialist Republic of Vietnam: Antidumping Duty Orders and Amended Final Affirmative Antidumping Determination for Cambodia,* 86 FR 26460 (May 14, 2021), as amended in *Mattresses from Thailand: Notice of Court Decision Not in Harmony with the Final Determination of Antidumping Investigation; Notice of Amended Final Determination; Notice of Amended Order, in Part,* 89 FR 456 (January 4, 2024) (*Amended Order or Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 27445 (May 2, 2023).

[3] The petitioners are: Brooklyn Bedding, Elite Comfort Solutions, FXI, Inc., Kolcraft Enterprises, Inc., Leggett & Platt, Incorporated, the International Brotherhood of Teamsters, and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO (USW). *See* Petitioners' Letter, ''Request for Administrative Review of Antidumping Duty Order,'' dated May 31, 2023.

[4] *See* Saffron's Letter, ''Request for Administrative Review of Saffron Living Co., Ltd.,'' dated May 21, 2023.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 44262 (July 12, 2023).

[6] *See* Saffron's Letter, ''Withdrawal of Request for Review,'' dated August 10, 2023.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Administrative Review of Mattresses from Thailand; 2022–2023,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[8] *See* 19 CFR 351.303 (for general filing requirements).

[9] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[10] *See* 19 351.309(c)(2) and (d)(2).

[11] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[12] *See APO and Service Final Rule.*

[13] *See* 19 CFR 351.303.

[14] *See* 19 CFR 351.212(b)(1).

importer-specific assessment rate is zero or *de minimis* in the final results of this review, we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by Saffron for which the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate these entries at the all-others rate (*i.e.,* 572.56 percent) [15] if there is no rate for the intermediate company(ies) involved in the transaction.[16]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication in the **Federal Register** of the notice of the final results of this review for all shipments of mattresses from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for Saffron will be equal to the weighted-average dumping margin established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior completed segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation but the producer is, then the cash deposit rate will be the rate established in 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 the all-others rate (*i.e.,* 572.56 percent).[17] These cash deposit requirements, when imposed, shall remain in effect until further notice.

[15] *See Amended Order,* 89 FR at 457.

[16] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[17] *See Amended Order,* 89 FR at 457.

Final Results of Review

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, no later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary 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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) of the Act, and 19 CFR 351.213.

Dated: January 22, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2024–01595 Filed 1–25–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD666]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold two public scoping meetings via webinar pertaining to Regulatory Amendment 36 to the Fishery Management Plan (FMP) for the Snapper Grouper Fishery in the South Atlantic Region. This amendment revises the recreational vessel limits for gag and black grouper and considers necessary regulatory changes to accommodate the use of on-demand gear for the black sea bass pot commercial fishery.

DATES: The scoping meetings will be held via webinar February 12 and 13, 2024, beginning at 6 p.m., EDT. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/public-hearings-and-scoping/* when it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Scoping documents, an online public comment form, and other materials will be posted to the Council's website at *https://safmc.net/public-hearings-and-scoping/* as they become available. Written comments should be addressed to John Carmichael, Executive Director, SAFMC, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405. Written comments must be received by February 16, 2024, by 5 p.m. During the meetings, Council staff will provide an overview of actions being considered in the amendment. Staff will answer clarifying questions on the presented information and the proposed actions. Following the presentation and questions, the public will have the opportunity to provide comments on the amendment.

Regulatory Amendment 36 to the Snapper Grouper FMP

Amendment 53 to the FMP for the Snapper Grouper Fishery of the South Atlantic Region became effective October 23, 2023, and established recreational vessel limits of 2 fish per vessel per day or per trip (depending on private recreational or for-hire component) of gag and black grouper. The Council intended for these limits to instead be an aggregate limit of 2 gag or black grouper per vessel. Therefore, the Council is considering revision of these recreational vessel limits to the originally intended aggregate limit through Regulatory Amendment 36.

Regulatory Amendment 36 also addresses accommodation of on-demand (also known as 'ropeless') gear for black sea bass pots for the commercial sector. On-demand gear reduces the probability of entanglements by whales and other protected species by not having vertical lines in the water column for the entire time that the pots are being fished. This type of gear has been experimentally used for the last several years under exempted fishing permits (EFP), the latest of which expires in April 2025. Scoping for Regulatory Amendment 36 will inform the Council of what changes to gear marking, identification, and stowage requirements are necessary to enable practical use of this type of gear in the commercial pot fishery beyond the EFP expiration. The Council will then determine a plan for addressing these changes through Regulatory Amendment 36 and other future amendments, as necessary.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 23, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024–01562 Filed 1–25–24; 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; Office of Marine and Aviation Operations: Occupational Health, Safety, and Readiness 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 August 17, 2023 (88 FR 56009) 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: Office of Marine and Aviation Operations: Occupational Health, Safety, and Readiness Forms.

OMB Control Number: 0648–XXXX.

Form Number(s): Medical: 57–10–01, 57–10–02.

Type of Request: Regular submission. This is a new information collection.

Number of Respondents: 1,000.

Average Hours per Response: 57–10–01, NOAA Health Services Questionnaire: 15 minutes; 57–10–02, Annual Tuberculosis Screening Document: 5 minutes.

Total Annual Burden Hours: 167.

Needs and Uses: This is a request for approval of a collection currently in use without OMB approval.

The National Oceanic and Atmospheric Administration's (NOAA) Office of Marine and Aviation Operations (OMAO) manages and operates NOAA's fleet of 15 *research and survey ships* and nine specialized environmental data-collecting *aircraft.* Comprised of civilians and officers of the *NOAA Commissioned Officer Corps,* OMAO also manages the *NOAA Diving Program, NOAA Small Boat Program,* and *NOAA Uncrewed Systems Operations Center.*

The research and survey ships operated, managed, and maintained by OMAO comprise the largest fleet of federal research ships in the nation. Ranging from large oceanographic research vessels capable of exploring the world's deepest ocean, to smaller ships responsible for charting the shallow bays and inlets of the United States, the fleet supports a wide range of marine activities including fisheries surveys, nautical charting, and ocean and climate studies.

NOAA aircraft operate throughout the world providing a wide range of capabilities including *hurricane reconnaissance and research,* marine mammal and fisheries assessment, and coastal mapping. NOAA aircraft carry scientists and specialized instrument packages to conduct research for NOAA's missions.

Housed within the NOAA Office of Marine and Aviation Operations and staffed by the *U.S. Public Health Service* (USPHS) Commissioned Corps officers, the Office of Health Services (OHS) is charged with directly supporting all personnel within the National Oceanic and Atmospheric Administration (NOAA).

NOAA medical officers work to maximize deployment readiness and minimize medically related disruptions to fleet, aircraft, and diving operations. OHS programs assess and promote mental and physical readiness within their operational medical discipline. Given the austere and geographically remote operational environments OHS supports, our officers are also responsible for preventing and containing disease in operational environments as subject matter experts in travel medicine. The forms contained in this collection will be used to make medical readiness recommendations for individuals and to key leadership in operational environments.

The 60-day **Federal Register** Notice indicated additional forms Medical: 57–10–05. Safety: 57–17–02, 57–17–09; and Small Boat: 57–19–04. However, these forms are completed by NOAA personnel and not subject to the Paperwork Reduction Act.

Affected Public: Individuals.

Frequency: As needed.

Respondent's Obligation: Required to Obtain or Retain Benefits.

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 the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–01597 Filed 1–25–24; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD625]

Notice of Availability of a Draft Environmental Impact Statement for the Issuance of an Incidental Take Statement Under the Endangered Species Act for Salmon Fisheries in Southeast Alaska Subject to the 2019 Pacific Salmon Treaty Agreement and Funding to the State of Alaska To Implement the 2019 Pacific Salmon Treaty Agreement

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

ACTION: Notice; availability of a draft environmental impact statement; request for written comments.

SUMMARY: A Notice of Intent to prepare this draft environmental impact statement (DEIS) was published in the **Federal Register** on October 4, 2023. This DEIS is prepared pursuant to the National Environmental Policy Act (NEPA) to assess the environmental impacts associated with NMFS issuing an incidental take statement (ITS) under section 7 of the Endangered Species Act (ESA) that would exempt take of threatened or endangered ESA-listed species by participants in Southeast Alaska (SEAK) salmon fisheries that are subject to the 2019 Pacific Salmon Treaty (PST) Agreement. This DEIS also assesses the environmental impacts of NMFS funding grants to the State of Alaska (State) to monitor and manage the SEAK salmon fisheries and salmon stocks subject to the 2019 PST Agreement. If warranted, NMFS would issue an ITS, consistent with requirements of the ESA, as part of a consultation on two agency actions related to the 2019 PST Agreement, including the funding to the State. That consultation would conclude with the issuance of a biological opinion (BiOp) that evaluates the effects of those agency actions on ESA-listed species and critical habitat. This DEIS directly responds to a court order and analyzes the effects of the proposed issuance of an ITS for those two agency actions.

DATES: NMFS requests comments on this DEIS. All comments must be received by 11:59 p.m. Eastern Time on March 11, 2024.

ADDRESSES: This document is available on the National Marine Fisheries Service Alaska Region website at: *https://www.fisheries.noaa.gov/resource/document/environmental-impact-statement-issuance-incidental-take-statement-salmon* and at *https://www.regulations.gov* by entering docket number ''NOAA–NMFS–2023–0152'' in the search bar.

You may submit comments on the DEIS identified by NOAA–NMFS–2023–0152 by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2023–0152 in the Search box. Click the ''Comment'' icon, complete the required fields and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Herrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Susan Meyer. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

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

FOR FURTHER INFORMATION CONTACT: Kelly Cates, telephone: 907–586–7221; email: *kelly.cates@noaa.gov;* or Bridget Mansfield, telephone: 907–586–7221; email: *bridget.mansfield@noaa.gov.*

SUPPLEMENTARY INFORMATION: This EIS directly responds to court orders to provide decision-makers and the public with an assessment of the environmental, economic, and social impacts of alternative approaches to the issuance of an ITS under Section 7 of the ESA that would exempt take of threatened or endangered ESA-listed species by participants in SEAK salmon fisheries that are subject to the 2019 PST Agreement.

Pacific Salmon Treaty and SEAK Salmon Fishery Management

The PST provides a framework for the management of salmon fisheries in the U.S. and Canada and regulates the salmon fisheries that occur in the ocean and inland waters of Oregon, Washington, British Columbia, the Yukon, and southeast Alaska, and the rivers that flow into these waters. The PST established fishing regimes that set upper limits on intercepting fisheries, defined as fisheries in one country that harvest salmon originating in another country, and sometimes include provisions that apply to the management of the Parties' non-intercepting fisheries as well. The overall purpose of the regimes is to accomplish the conservation, production, and harvest allocation objectives set forth in the PST. These objectives are designed to prevent overfishing, provide for each country to benefit from production originating in its waters, avoid undue disruption of existing fisheries, and reduce interceptions to the extent practicable.

Each Party to the PST must implement the fisheries management framework domestically. Salmon fisheries in both Federal and state waters off SEAK are managed consistent with the 2019 PST Agreement. For Federal fisheries occurring in the Exclusive Economic Zone (EEZ) off the coast of SEAK, the U.S. does this through implementation of provisions of the Magnuson-Stevens Fishery Conservation and Management Act and the Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska (FMP). The FMP establishes two management areas, the East Area and the West Area with a border at Cape Suckling. In the East Area, the FMP delegates management of the commercial troll and sport salmon fisheries that occur in the EEZ to the State and prohibits commercial salmon fishing with net gear in the EEZ.

NMFS does not manage the salmon fisheries that occur in state waters (internal waters and marine waters from shore to 3 nautical miles (approximately 6 kilometers) offshore) of SEAK. The State of Alaska Department of Fish and Game (ADF&G) manages salmon troll, net, personal use, and sport fisheries subject to the PST's conservation, production, and harvest allocation objectives in state waters. The SEAK commercial salmon fisheries occurring in state waters include troll, purse seine, drift gillnet, and set gillnet fisheries. The State's management of salmon fisheries, including harvest monitoring, stock assessment, and transboundary river enhancement necessary to implement the 2019 PST Agreement, is partially funded through Federal grants dispersed by NOAA.

ESA Consultation and Litigation History

In response to the 2019 PST Agreement, NMFS consulted under section 7 of the ESA on three actions:

• Delegation of management authority over salmon fisheries in the SEAK EEZ to the State of Alaska on the basis of new information regarding the effects of the action and the contemporary status of impacted ESA-listed species;

• Federal funding through grants to the State of Alaska for the State's management of commercial and sport salmon fisheries and transboundary river enhancement necessary to implement the 2019 PST Agreement; and,

• Federal funding of a conservation program to support critical Puget Sound Chinook stocks and Southern Resident Killer Whales (SRKW) related to the 2019 PST Agreement, one component of which included funding of a prey increase program for SRKW.

The Federal funding of the conservation program to support Puget Sound Chinook stocks and SRKW was a separate action from the two Federal actions related to the SEAK salmon fisheries (delegation and funding). In 2019, NMFS completed the consultation and issued the 2019 BiOp and ITS. In the 2019 BiOp, NMFS concluded that the actions were not likely to jeopardize the continued existence of any of the ESA-listed species and that the actions were not likely to destroy or adversely modify designated critical habitat for any of the listed species. NMFS issued an ITS in the 2019 BiOp for take associated with the Federal actions related to the SEAK salmon fisheries, compliance with which would exempt participants in these fisheries from the ESA's prohibition on the incidental take of threatened and endangered species.

In 2020, the Wild Fish Conservancy (WFC)filed a lawsuit in the U.S. District Court for the Western District of Washington challenging the 2019 BiOp (*Wild Fish Conservancy* v. *Quan*, No. 2:20–CV–417–RAJ–MLP (W.D. Wash.)). WFC alleged NMFS violated the ESA and NEPA. On August 8, 2022, the district court found that NMFS violated both the ESA and NEPA (*Wild Fish Conservancy* v. *Quan*, No. 2:20–CV–417–RAJ–MLP, 2021 WL 8445587 (W.D. Wash. Sept. 27, 2021), report and recommendation adopted, No. 2:20–CV–417–RAJ, 2022 WL 3155784 (W.D. Wash. Aug. 8, 2022)).

With respect to NEPA, the court concluded NMFS failed to conduct a NEPA analysis for the issuance of the ITS with the 2019 BiOp. The court also concluded that NMFS failed to conduct adequate NEPA analysis for the adoption of the prey increase program. The court remanded to the agency to address its conclusions regarding these NEPA, as well as the ESA, deficiencies.

As part of its effort to address the court's orders on remand, NMFS intends to conduct a new ESA section 7 consultation on the effects from the federal actions related to the SEAK salmon fisheries (delegation and funding), and if warranted, would issue a new ITS as part of that consultation. Compliance with a new ITS would exempt participants in the SEAK salmon fisheries under the 2019 PST Agreement from the ESA's prohibition on the incidental take of threatened and endangered species.

Draft Environmental Impact Statement

This DEIS responds specifically to the court order with respect to the stated failure to prepare an analysis pursuant to NEPA for the issuance of the ITS for the SEAK salmon fisheries. This DEIS analyzes the effects of a reasonable range of alternatives for the proposed issuance of a new ITS.

In light of the nexus between the court's orders on the ESA and NEPA deficiencies and in light of NMFS's ongoing disbursement of funds to the State, this EIS also evaluates the effects of the following actions under consultation:

• NMFS's delegation of management authority over salmon fisheries in the EEZ in SEAK to the State of Alaska under the Salmon FMP; and

• Federal funding through grants to the State of Alaska for the State's management of commercial and sport salmon fisheries and transboundary river enhancement necessary to implementation of the 2019 PST Agreement. This is also a second proposed action considered as a component of the alternatives.

Ultimately, this DEIS provides an assessment of the environmental, economic, and social impacts of the SEAK salmon fisheries in federal and state waters, even though none of the federal actions directly authorize the fisheries, because NMFS expects these impacts to occur from the operation of the salmon fisheries in SEAK that are prosecuted pursuant to the 2019 PST Agreement, facilitated by proposed Federal funding of grants to the State under the 2019 PST Agreement, and proposed to be exempted from liability for incidental takes of ESA listed species through the issuance of a new ITS.

Since the primary Federal action here—the issuance of the ITS—would exempt incidental take of ESA-listed species that occur in compliance with the ITS, the DEIS focuses on effects to those species (both ESA-listed salmon and ESA-listed marine mammals). In addition, the DEIS also analyzes the impacts of the SEAK salmon fisheries on non-ESA-listed salmon, marine mammals, habitat, seabirds, greenhouse gas emissions and climate change. The DEIS also analyzes the impacts of the alternatives on fishery participants, communities, and Alaska Native tribes.

NMFS is also preparing a separate EIS for the expenditure of Federal funding to for the prey increase program for SRKW (88 FR 54301, August 10, 2023). For more information about that EIS, see *https://www.fisheries.noaa.gov/action/review-prey-increase-program-southern-resident-killer-whales.*

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

Dated: January 23, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–01606 Filed 1–25–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD664]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad-Hoc Klamath River Fall Chinook Workgroup will hold an online meeting.

DATES: The online meeting will be held Tuesday, February 13, 2024, from 9 a.m. until 3 p.m., Pacific standard time, or until business for the day concludes.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Robin Ehlke, Staff Officer, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to

discuss and develop preliminary recommendations to inform Pacific Council decision-making at the March and April 2024 Pacific Council meetings for the 2024 salmon pre-season management process as it relates to Klamath River fall Chinook management. Additional discussion on Klamath River Dam removal, workload planning, etc. may also occur.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: January 23, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024–01560 Filed 1–25–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD673]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a Seminar Series presentation via webinar.

SUMMARY: The South Atlantic Fishery Management Council (Council) will host a presentation on reproductive resilience in marine fishes.

DATES: The webinar presentation will be held on Tuesday, February 13, 2024, from 1 p.m. until 2:30 p.m.

ADDRESSES: The presentation will be provided via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-seminar-series/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council will host a presentation on the reproductive resilience in fish, which is the ability of a population to maintain reproductive success to produce long-term population stability. Fish managed by the Council have diverse reproductive strategies and these reproductive strategies along with environmental variables and behavioral traits should be considered when developing assessments and management regulations. A case study on gag grouper will be presented. A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 23, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024–01561 Filed 1–25–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD613]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 89 South Atlantic Tilefish Life History Topical Working Group (LH–TWG) Webinar II.

SUMMARY: The SEDAR 89 assessment of the South Atlantic stock of tilefish will consist of a series of LH–TWG webinars. A SEDAR 89 LH–TWG Webinar is scheduled for February 14, 2024. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 89 South Atlantic Tilefish LH–TWG Webinar II has been scheduled for February 14, 2024, from 9 a.m. to 12 p.m., eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at *Meisha.Key@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Meisha Key, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Meisha.Key@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses

of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 89 South Atlantic Tilefish LH–TWG Webinar II are as follows: Report findings of potential utility and incorporation of new life history data sources.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: January 23, 2024.

Diane M. DeJames-Daly,

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

[FR Doc. 2024–01559 Filed 1–25–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the procurement list.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* February 25, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Deletions

On 12/22/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
PSIN 01251B—Marker, Postal Tray, BBM—Clearance—Tuesday, Orange
PSIN 01251C—Marker, Postal Tray, BBM—Clearance—Wednesday, Green
PSIN 01251D—Marker, Postal Tray, BBM—Clearance—Thursday, Violet
PSIN 01251E—Marker, Postal Tray, BBM—Clearance—Friday, Yellow
PSIN 01251F—Marker, Postal Tray, BBM—Clearance—Saturday, Pink
PSIN 01251G—Marker, Postal Tray, BBM—Clearance—Sunday, White
PSIN 01251A—Marker, Postal Tray, BBM—Clearance—Monday, Blue
PSIN 01250F—Marker, Postal Tray, BBM—Delivery—Saturday, Pink
PSIN 01250E—Marker, Postal Tray, BBM—Delivery—Friday, Yellow
PSIN 01250D—Marker, Postal Tray, BBM—Delivery—Thursday, Violet
PSIN 01250C—Marker, Postal Tray, BBM—Delivery—Wednesday, Green
PSIN 01250B—Marker, Postal Tray, BBM—Delivery—Tuesday, Orange
PSIN 01250A—Marker, Postal Tray, BBM—Delivery—Monday, Blue
PSIN 01249F—Marker, Postal Tray, First Class—Saturday, Pink
PSIN 01249E—Marker, Postal Tray, First Class—Friday, Yellow
PSIN 01249D—Marker, Postal Tray, First Class—Thursday, Violet
PSIN 01249C—Marker, Postal Tray, First Class—Wednesday, Green
PSIN 01249B—Marker, Postal Tray, First Class—Tuesday, Orange
PSIN 01249A—Marker, Postal Tray, First Class—Monday, Blue
Contracting Activity: USPS Vehicles & Delivery and Industrial Equipment CMC, Philadelphia, PA

NSN(s)—Product Name(s):
7045–01–599–2657—Encrypted Compact Disc, Recordable, 25 CDs on Spindle, Silver
7045–01–436–7853—Compact Disc, Recordable, Gold, BX/5
Authorized Source of Supply: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7045–01–470–3596—Compact Disc, Rewritable, EA/1
Authorized Source of Supply: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
8970–00–NIB–0034—Personal Hygiene Kit
Authorized Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: GSA/FSS SPECIAL PROGRAMS DIVISION, ARLINGTON, VA

NSN(s)—Product Name(s):
7520–01–619–0302—Portable Desktop Clipboard, 9½″ W x 1½″ D x 13½″ H, Army Green
Authorized Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Janitorial
Mandatory for: US Army Corps of Engineers, Transatlantic Middle East District, Admiral Byrd Facility, Winchester, VA
Authorized Source of Supply: NW Works, Inc., Winchester, VA
Contracting Activity: DEPT OF THE ARMY,

W31R ENDIS MIDDLE EAST

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2024–01599 Filed 1–25–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes product(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* February 25, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

In accordance with 41 CFR 51–5.3(b), the Committee intends to add this services requirement to the Procurement List as a mandatory purchase only for the contracting activity and location listed below with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding the service to the Procurement List, the Committee will consider other pertinent information, including information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Logistics Support Service
Mandatory for: US Navy, Southwest Regional Maintenance Center (SWRMC), San Diego, CA
Proposed Source of Supply: Professional Contract Services, Inc.
Contracting Activity: US Navy, Southwest Regional Maintenance Center (SWRMC), San Diego, CA

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7510–01–484–4561—Refill, Rubberized Ballpoint Stick Pen w Chain, Black Ink, Medium Point
Mandatory Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY
NSN(s)—Product Name(s):
7520–01–584–0881—Holder, Note, Sticky, Rosewood
Mandatory Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2024–01598 Filed 1–25–24; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

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

DATES: Comments must be submitted on or before February 26, 2024.

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

In addition to the submission of comments to *https://reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0026, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

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

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable

[1] 17 CFR 145.9.

laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Andrew Pai, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, (646) 746–9893; email: *apai@cftc.gov,* and refer to OMB Control No. 3038–0026.

SUPPLEMENTARY INFORMATION:

Title: Gross Collection of Exchange-Set Margins for Omnibus Accounts (OMB Control No. 3038–0026). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 1.58 requires futures commission merchants to collect exchange-set margin for omnibus accounts on a gross, rather than a net, basis. The regulation provides that the carrying FCM need not collect margin for positions traded by a person through an omnibus account in excess of the amount that would be required if the same person, instead of trading through an omnibus account, maintained its own account with the carrying FCM. To prevent abuse of this exception to the regulation, a carrying FCM must maintain a written representation from the originating FCM or foreign broker that the particular positions held in the omnibus account are part of a hedge or spread transaction. This collection of information is necessary in order to provide documentation that can be inspected with regard to questions of proper compliance with gross margining requirements. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Sections 4c, 4d, 4f, 4g and 8a of the Commodity Exchange Act, 7 U.S.C. 6c, 6d, 6f, 6g and 12a.

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 on November 17, 2023 (88 FR 80284) (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden due to the reduced number of futures commission merchants in the industry. The respondent burden for this collection is estimated to be as follows:

Respondents/Affected Entities: 52.

Estimated Total Annual Responses: 208.

Estimated Total Annual Burden Hours: 17 hours.

Frequency of collection: On occasion.

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

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

Dated: January 23, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–01600 Filed 1–25–24; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2024–0003; OMB Control Number 0704–0483]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS) Part 231, Independent Research and Development Technical Descriptions

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0483 through May 31, 2024. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by March 26, 2024.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0483, using either of the following methods:

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

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0483 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Jon M. Snyder, at 703–945–5341.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Independent Research and Development Technical Descriptions; OMB Control Number 0704–0483.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 79.

Responses per Respondent: 66.82.

Annual Responses: 5,279.

Average Burden per Response: 0.5 hour.

Annual Burden Hours: 2,640.

Needs and Uses: DFARS 231.205–18 requires contractors to report independent research and development (IR&D) projects to the Defense Technical Information Center (DTIC) using DTIC's online IR&D database. The inputs must be updated at least annually and when the project is completed. The data provide in-process information on IR&D projects for which DoD reimburses the contractor as an allowable indirect expense. In addition to improving DoD's ability to determine whether contractor IR&D costs are allowable, the data provide visibility into the technical content of industry IR&D activities to meet DoD needs.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024–01527 Filed 1–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2024–0004; OMB Control Number 0704–0214]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement Part 217, Special Contracting Methods

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed

extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of DoD's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704–0214 through May 31, 2024. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by March 26, 2024.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0214, using either of the following methods:

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

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0704–0214 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, 703–901–3176.

SUPPLEMENTARY INFORMATION:

Title and OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 217, Special Contracting Methods, and related clauses at 252.217; OMB Control Number 0704–0214.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 4,815.

Responses per Respondent: Approximately 6.4.

Annual Responses: 30,758.

Average Burden per Response: Approximately 7.5 hours.

Annual Burden Hours: 229,436.

Needs and Uses: DFARS part 217 prescribes policies and procedures for acquiring supplies and services by special contracting methods. Contracting officers use the required information as follows:

DFARS 217.7004(a)—When solicitations permit the exchange (or trade-in) of personal property and application of the exchange allowance to the acquisition of similar property, offerors must provide the prices for the new items being acquired both with and without any exchange. Contracting officers use the information to make an informed decision regarding the reasonableness of the prices for both the new and trade-in items.

DFARS 217.7404–3(b)—When awarded an undefinitized contract action, contractors are required to submit a qualifying proposal in accordance with the definitization schedule provided in the contract. Contracting officers use this information to complete a meaningful analysis of a contractor's proposal in a timely manner.

DFARS 217.7505(d)—When responding to sole-source solicitations that include the acquisition of replenishment parts, offerors submit price and quantity data on any Government orders for the replenishment part(s) issued within the most recent 12 months. Contracting officers use this information to evaluate recent price increases for sole-source replenishment parts.

DFARS clause 252.217–7012—Included in master agreements for repair and alteration of vessels, paragraph (d) of the clause requires contractors to show evidence of insurance under the agreement. Contracting officers use this information to ensure that the contractor is adequately insured when performing work under the agreement. Paragraphs (f) and (g) of the clause require contractors to notify the contracting officer of any property loss or damage for which the Government is liable under the agreement and submit a request, with supporting documentation, for reimbursement of the cost of replacement or repair. Contracting officers use this information to stay informed of lost or damaged property for which the Government is liable, and to determine the appropriate course of action for replacement or repair of the property.

DFARS provision 252.217–7026—Included in certain solicitations for supplies that are being acquired under other than full and open competition, the provision requires the apparently successful offeror to identify their sources of supply so that competition can be enhanced in future acquisitions.

DFARS clause 252.217–7028—When performing under contracts for overhaul, maintenance, and repair, contractors must submit a work request and proposal for ''over and above'' work that is within the scope of the contract, but not covered by the line item(s) under the contract, and necessary in order to satisfactorily complete the contract. This requirement allows the Government to review the need for pending work before the contractor begins performance.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2024–01528 Filed 1–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Rescindment of a system of records notices.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is providing notice to rescind 23 Privacy Act SORNs. A description of these systems can be found in the **SUPPLEMENTARY INFORMATION** section. Additionally, the DoD is issuing a direct final rule, published elsewhere in this issue of the **Federal Register**, to amend its regulation and remove the Privacy Act exemptions rule for four SORNs [items (i) through (k), and (t)] rescinded in this notice.

DATES: The rescindment of these SORNs is effective January 26, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Privacy and Civil Liberties Directorate, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700, *OSD.DPCLTD@mail.mil,* (703) 571–0070.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, and as part of its ongoing integration and management efforts, the DoD is removing 26 Privacy Act SORNs from its inventory. Upon review of its

inventory, DoD determined it no longer needs or uses these systems of records because the records are covered by other SORNs; therefore, DoD is retiring the following:

These five systems of records [items (a) through (e)] are being rescinded because the records are now maintained as part of the DoD-wide system of records titled DoD–0006, Military Justice and Civilian Criminal Case Records, published in the ***Federal Register*** *on May 25, 2021 (86 FR 28086).*

(a) The Department of the Navy system of records MJA00018, Performance File (August 3, 1993, 58 FR 41257) was established to provide a record on individuals from the initiation of investigation or indictment until such procedure is final, whether by conviction, acquittal, dismissal, or by the matter being dropped, and any resultant administrative action or proceedings for use in determining assignments whether an individual selected for promotion should be promoted while the matter is pending.

(b) The Department of the Navy system of records N05814–3, Courts-Martial Information (January 8, 2001, 66 FR 1325) was established to collect data on general and bad conduct discharge special courts-martial and to provide information and support to victims and witnesses in compliance with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990. Files contain courts-martial information on special courts-martial if sentence, as finally approved, includes a punitive discharge and all general courts-martial including name, Social Security Number, pleas, convening authority action, supervisory authority action, and Court of Military Review action. Information is available from 1970 through 1986 only.

(c) The Department of the Navy system of records N05814–4, Article 69(b) Petitions (January 8, 2001, 66 FR 1326) was established to complete appellate review as required under 10 U.S.C. 869(b) and to provide a central repository accessible to the public who may request information concerning the appellate review or want copies of individual public records, as well as to provide information and support to victims and witnesses in compliance with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990. Files contain individual service member's petition together with all forwarding endorsements and copies of action taken by the Judge Advocate General with supporting memorandum.

(d) The Department of the Navy system of records N05814–5, Article 73 Petitions for New Trial (January 8, 2001, 66 FR 1327) was established to provide a record of individual petitions in order to answer inquiries from the individual concerned and to provide additional advice to commands involved when and if such petitions are granted. Files contain the petition for new trial, the forwarding endorsements if the petition was submitted via the chain of command, and the action of the Judge Advocate General on the petition.

(e) The Department of the Navy system of records N05814–6, Appellate Case Tracking System (ACTS) (June 8, 1999, 64 FR 30498) was established to track the status of courts-martial cases appealed to the Navy-Marine Corps Court of Criminal Appeals for the Armed Forces. The system was also used by the officials and employees of the Department of the Navy to provide management and statistical information to governmental, public, and private organizations and individuals. Files contain Navy appellate case records, additional Navy appellate case information records, and historical Navy appellate case records from 1986 to present.

These four systems of records [items (f) through (i)] are being rescinded because the records are now maintained as part of the DoD-wide system of records titled DoD–0016, DoD Claims Management Records, published in the ***Federal Register*** *on April 26, 2023 (88 FR 25384).*

(f) The Department of the Air Force system of records F051 AFJA J, Claims Records (December 31, 2008, 73 FR 80377) was established for claims adjudication and processing, budgeting, and management of claims. Records are also used as necessary in civil litigation involving the United States.

(g) The Department of the Navy system of records N05880–2, Admiralty Claims Files (December 6, 2013, 78 FR 73512; May 9, 2003, 68 FR 24971) was established to evaluate and settle Admiralty tort claims asserted for and against the Department of the Navy involving death, personal injury, property damage, or salvage, and to provide litigation support to the Department of Justice.

(h) The Department of the Navy system of records N05890–8, NAVSEA Radiation Injury Claim Records (February 22, 1993, 58 FR 10788) was established to provide NAVSEA Radiological Control Managers with information necessary to evaluate radiation injury compensation claims.

(i) The Defense Intelligence Agency system of records LDIA 0900, Accounts Receivable, Indebtedness and Claims (November 15, 2013, 78 FR 68828; May 3, 2012, 77 FR 26257; August 10, 2011, 76 FR 49457) was established to manage records used in cases regarding claims, payments, and indebtedness associated with the Defense Intelligence Agency. Information is used to comply with regulatory requirements and to facilitate collections and/or payments.

These two systems of records [items (j) through (k)] are rescinded because the records are now maintained as a part of the DoD-wide system of records titled DoD–0017, Privacy and Civil Liberties Complaints and Correspondence Records published in the ***Federal Register*** *on February 23, 2023 (88 FR 11412).*

(j) The Office of the Inspector General system of records CIG–29, Privacy and Civil Liberties Complaint Reporting System (May 5, 2014, 79 FR 25586) was established to support the DoD Inspector General Privacy and Civil Liberties Programs and the requirement to report complaints to the Defense Privacy and Civil Liberties Office for reporting to Congress.

(k) The Defense Intelligence Agency system of records LDIA 12–0002, Privacy and Civil Liberties Case Management Records (September 17, 2012, 77 FR 57078) was established to receive, log, and track the processing of Privacy Act violations, inquiries, and allegations of violations of civil liberties.

These eight systems of records [items (l) through (s)] are rescinded because the records are now maintained as a part of the DoD-wide system of records titled DoD–0018, DoD Patron Authorization, Retail, and Service Activities, published in the ***Federal Register*** *on March 30, 2023 (88 FR 19103).*

(l) The Department of the Army system of records AAFES 0207.02, Exchange Retail Sales Transaction Data (March 18, 2016, 81 FR 14839; August 28, 2006, 71 FR 50900) was established and maintained to enable the Army and Air Force Exchange Service to carry out its mission to enhance the quality of life for authorized patrons and to support military readiness, recruitment, and retention by providing a world-wide system of Exchanges with merchandise and household goods similar to commercial stores and services.

(m) The Department of the Army system of records AAFES 0702.34, Accounts Receivable Files (November 4, 1999, 64 FR 60179) was established to process, monitor, and post audit accounts receivable, to administer the

Federal Claims Collection Act, and to answer inquiries pertaining thereto; to collect indebtedness.

(n) The Department of the Army system of records AAFES 1609.02, AAFES Customer Service (August 28, 2006, 71 FR 50898) was established to record customer transactions/payment for layaway and special orders; to determine payment status before finalizing transactions; to identify account delinquencies and prepare customer reminder notices; to mail refunds on canceled layaway or special orders; to process purchase refunds; to document receipt from customer of merchandise subsequently returned to vendors for repair or replacement, shipping/delivery information, and initiate follow up actions; to monitor individual customer refunds; to perform market basket analysis; to improve efficiency of marketing system(s); and to help detect and prevent criminal activity and identify potential abuse of exchange privileges.

(o) The Department of the Army system of records AAFES 1609.03, AAFES Catalog System (December 14, 2015, 80 FR 77330; August 9, 1996, 61 FR 41593) was established to locate order information; to reply to customer inquiries and complaints; to create labels for shipment to the proper location; to refund customer remittances or to collect monies due; to provide claim and postal authorities with confirmation/certification of shipment for customer claims for damage or lost shipments.

(p) The Department of the Navy system of records N04066–1, Bad Checks and Indebtedness Lists (September 22, 2006, 71 FR 55445) was established to maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy and to collect indebtedness. Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes. Records may also be used by the Army and Air Force Exchange Service (AAFES) or its contractor for the purpose of recouping fees.

(q) The Department of the Navy system of records N04066–3, NEXCOM Layaway Sales Records (April 30, 2008, 73 FR 23446) was established to record the selection of layaway merchandise, record payments, verify merchandise pickup, and as a management tool to perform sales audits.

(r) The Department of the Navy system of records N04066–5, NEXCOM Direct Mail List/Patron Profile (September 9, 1996, 61 FR 47491) was established to maintain a database which will permit the Navy Exchange Program to mail sales promotional, informational, and market research materials to those authorized customers who have requested receipt of materials.

(s) The Defense Commissary Agency system of records Z0035–01, Commissary Retail Sales Transaction Data (January 6, 2015, 80 FR 497; May 24, 2013, 78 FR 31528; December 28, 2007, 72 FR 73782) was established to enable the Defense Commissary Agency to carry out its mission to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention by providing a world-wide system of commissaries similar to commercial grocery stores and selling merchandise and household goods similar to those sold in commercial grocery stores; to enable the authentication of authorized patrons, record purchases and purchases prices, calculate the total amount owed by the customer, account for and deduct coupons and other promotional discounts, and accept payment by various media; to enable the collection of debts due the United States in the event a patron's medium of payment is declined or returned unpaid; to enable the monitoring of purchases of restricted items outside the United States, its territories, and possessions, as necessary, to prevent black marketing in violation of treaties or agreements, and to comply with age restrictions applicable to certain purchases by minors or those under allowable ages; to enable authorized patrons to order commissary retail products on-line through their home computer or mobile device and to pay for such purchases electronically either at the time of ordering or at the time of pick up; to enable the creation of commissary patron profiles for the purposes of determining aggregate patron demographic data and patron shopping preference information, and to enable the compilation of individual patron comments, inquiries, complaints, requests, and feedback posted to social media pages; for use in responding to individual patron inquiries, assessing aggregate patron satisfaction with the delivery of the commissary benefit, and in determining appropriate product availability meeting the commissary customers' current and future needs and wants.

The following individual system of records notices [items (t) through (w)] are being rescinded for the reasons stated in each paragraph below.

(t) The Defense Counterintelligence and Security Agency (DCSA) system of records V5–04, Counterintelligence Issues Database (CII–DB) (January 29, 2013, 78 FR 6077; August 17, 1999, 64 FR 44710) was established to provide a centralized database to document, refer, track, monitor, and evaluate Counterintelligence indicators/issues uncovered through Personnel Security Investigations and Administrative Inquiries. The DCSA is rescinding V5–04 because the records are maintained as part of as a part of the DoD-wide system of records titled DUSDI 02-DoD, Personnel Vetting Records System published in the **Federal Register** on October 17, 2018 (83 FR 52420).

(u) The Defense Contract Audit Agency system of records RDCAA 358.3, Grievance and Appeal Files (December 31, 2012, 77 FR 77048; November 20, 1997, 62 FR 62012) was established to record the grievance, the nature and scope of inquiry into the matter being grieved, and the treatment accorded the matter by management. The DCAA is rescinding RDCAA 358.3 because the records are maintained as part of EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeals Records, published in the **Federal Register** on November 17, 2016, 81 FR 8116.

(v) The Office of the Secretary, DoD/Joint Staff system of records DWHS D01, DoD National Capital Region Mass Transportation Benefit Program (February 25, 2016, 81 FR 9462; October 27, 2015, 80 FR 65724; December 9, 2011, 76 FR 76959) was established to manage the DoD National Capital Region Mass Transportation Benefit Program for DoD military and civilian personnel applying for and in receipt of fare subsidies. Used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research. The Office of the Secretary, DoD/Joint Staff is rescinding DWHS D01 because the records are now maintained as part of the DoD–0009, Defense Mass Transportation Benefits Records published in the **Federal Register** on January 7, 2022, 87 FR 943.

(w) The Defense Intelligence Agency (DIA) system of records LDIA 0011, Student Information Files (August 5, 2013, 78 FR 47308; May 11, 2010; 75 FR 26201) was established to provide data for managing the student population at the National Intelligence University (NIU) and for historical documentation. The DIA is rescinding LDIA 011 because the records are now maintained as part of the ODNI/NIU–01, NIU Program Records published in the **Federal**

Register on October 6, 2022, 87 FR 60713.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Privacy and Civil Liberties Directorate website at *https://dpcld.defense.gov.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or alien lawfully admitted for permanent residence.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this SORN bulk rescindment to OMB and Congress.

System name	Number	History
(a) Performance File	MJA00018	August 3, 1993, 58 FR 41257.
(b) Courts-Martial Information	N05814–3	January 8, 2001, 66 FR 1325.
(c) Article 69(b) Petitions	N05814–4	January 8, 2001, 66 FR 1326.
(d) Article 73 Petitions for New Trial	N05814–5	January 8, 2001, 66 FR 1327.
(e) Appellate Case Tracking System (ACTS)	N05814–6	June 8, 1999, 64 FR 30498.
(f) Claims Records	F051 AFJA J	December 31, 2008, 73 FR 80377.
(g) Admiralty Claims Files	N05880–2	December 6, 2013, 78 FR 73512; May 9, 2003, 68 FR 24971.
(h) NAVSEA Radiation Injury Claim Records	N05890–8	February 22, 1993, 58 FR 10788.
(i) Accounts Receivable, Indebtedness and Claims	LDIA 0900	November 15, 2013, 78 FR 68828; May 3, 2012, 77 FR 26257; August 10, 2011, 76 FR 49457.
(j) Privacy and Civil Liberties Complaint Reporting System	CIG–29	May 5, 2014, 79 FR 25586.
(k) Privacy and Civil Liberties Case Management Records	LDIA 12–0002	September 17, 2012, 77 FR 57078.
(l) Exchange Retail Sales Transaction Data	AAFES 0207.02	March 18, 2016, 81 FR 14839; August 28, 2006, 71 FR 50900.
(m) Accounts Receivable Files	AAFES 0702.34	November 4, 1999, 64 FR 60179.
(n) AAFES Customer Service	AAFES 1609.02	August 28, 2006, 71 FR 50898.
(o) AAFES Catalog System	AAFES 1609.03	December 14, 2015, 80 FR 77330; August 9, 1996, 61 FR 41593.
(p) Bad Checks and Indebtedness List	N04066–1	September 22, 2006, 71 FR 55445.
(q) NEXCOM Layaway Sales Records	N04066–3	April 30, 2008, 73 FR 23446.
(r) NEXCOM Direct Mail List/Patron Profile	N04066–5	September 9, 1996, 61 FR 47491.
(s) Commissary Retail Sales Transaction Data	Z0035–01	January 6, 2015, 80 FR 497; May 24, 2013, 78 FR 31528; December 28, 2007, 72 FR 73782.
(t) Counterintelligence Issues Database (CII–DB)	V5–04	January 29, 2013; 78 FR 6077; August 17, 1999, 64 FR 44710.
(u) Grievance and Appeals Files	RDCAA 358.3	December 31, 2012, 77 FR 77048; November 20, 1997, 62 FR 62012.
(v) DoD National Capital Region Mass Transportation Benefit Program.	DWHS D01	February 25, 2016, 81 FR 9462; October 27, 2015, 80 FR 65724; December 9, 2011, 76 FR 76959.
(w) Student Information Files	LDIA 011	August 5, 2013, 78 FR 47308; May 11, 2010; 75 FR 26201.

Dated: January 22, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–01553 Filed 1–25–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket ID ED—2023—OPE—0205]

Request for Information Regarding Mental Health and Substance Use Disorder Needs in Higher Education

AGENCY: Office of Postsecondary Education, U.S. Department of Education.

ACTION: Request for information.

SUMMARY: The U.S. Department of Education (Department) is requesting information in the form of written comments that may include information, research, and suggestions regarding supporting student mental health and/or substance use disorder (behavioral health) needs in higher education. The Office of Postsecondary Education solicits these comments: to identify examples of what has been effective in addressing college student mental health and substance use disorder needs; to learn how institutions of higher education (IHEs) have transformed their campus cultures and created campus-wide, inclusive strategies to provide support; to identify how State higher education agencies have supported college behavioral health; to better understand potential challenges institutions are facing in the design and implementation of solutions; and, ultimately, to inform future work from the Department.

DATES: We must receive your comments on or before February 25, 2024.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal. We will not accept comments submitted by hand delivery, fax, or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''
- *Postal Mail or Commercial Delivery:* If you do not have internet access or electronic submission is not possible, you may mail written comments to the Office of the Under Secretary, U.S. Department of Education, 400 Maryland Avenue SW, Room 7E307, Washington, DC 20202. Mailed comments must be postmarked by February 25, 2024, to be accepted.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at

www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

This is a request for information only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP or a notice inviting applications. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, we are not seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI. The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

FOR FURTHER INFORMATION CONTACT: Jessica Bowen Gall, U.S. Department of Education, 400 Maryland Avenue SW, Room 4C212, Washington, DC 20202. Telephone: (202) 453–5573. Email: *jessica.gall@ed.gov*.

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

I. Background

The need for mental health support has been on the rise across the country over the past two decades. In addition to rising rates of depression and anxiety, suicide is the second leading cause of death among 10–14- and 20–34-year-olds.[1]

For example, even before the COVID–19 pandemic, IHEs across the country were seeing an increase in depression and anxiety among young people and, unfortunately, an increase in suicide ideation, suicide attempts, and suicides.[2] The COVID–19 pandemic only exacerbated these trends with a disproportionate impact on minoritized groups. In the Healthy Minds Data Report for 2021 Winter/Spring, among currently enrolled college students over the age of 18, 41 percent of students reported experiencing any depression, and 34 percent of students reported experiencing any anxiety.[3] In the 2021–22 updated Healthy Minds Data Report, those numbers increased: 44 percent of students reported experiencing any depression, and 37 percent of students reported experiencing any anxiety.[4] These data show that rates of anxiety and depression continued to increase during the pandemic. Moreover, research indicates that unmet mental health needs for students during college are associated with adverse student outcomes, including a low GPA and an increased likelihood of dropping out.[5]

Some college students may also experience issues with substance misuse or suffer from substance use disorders. The updated Healthy Minds Data Report also revealed that 28 percent of surveyed students reported engaging in binge drinking more than once in the past two weeks and 20 percent reported using marijuana in the last 30 days.[6] Additionally, according to data from the Substance Abuse and Mental Health Services Administration's (SAMHSA's) 2022 National Survey on Drug Use and Health, the prevalence of substance use disorders involving either drugs or alcohol in 18- to 25-year olds is approximately 28 percent.[7]

College presidents have taken note of the need for increased mental health support. In American Council on Education (ACE) Pulse Point surveys throughout 2021, over 70 percent of college presidents indicated that student mental health was one of their top three concerns, an increase of more than 30 percentage points from April 2020.[8] Even after the end of the COVID–19 pandemic, mental health needs persist alongside many of the same barriers students and institutions faced prior to the pandemic.

The Department and the Biden-Harris Administration have long been focused on promoting behavioral health supports at both the K–12 and postsecondary levels as an integral strategy to supporting student overall well-being and success.[9] The Department's focus on this issue includes providing guidance and resources to institutions to help support them in addressing student mental health and substance use disorder needs.

The Department is also committed to taking additional steps to support institutions in addressing students' mental health and substance use disorder needs. One component of that work is to learn from those who have long engaged in addressing these needs and improving access, services, and outcomes to determine what is working, identify any gaps or unmet needs, and highlight opportunities for the Department and other agencies to be a beneficial partner. We want to work alongside IHEs, State higher education agencies, other Federal agencies, and experts to ensure students and institutions have the necessary knowledge and resources to select and implement easily accessible and effective interventions. We also want to ensure that institutions are connected to evidence-based solutions and peer institutions and can help build the base of what works both for entire campuses and for specific settings and high-need populations.

II. Solicitation of Comments: Helping Institutions Address Student Mental Health and Substance Use Disorder Needs

To help inform the agency's role in supporting institutions in addressing mental health and substance use disorder needs, the Department is seeking input from the public. The deadline for these submissions is February 25, 2024. The Department encourages comments from IHEs, students, researchers, policy experts, academics, behavioral health professionals, other individuals familiar with identifying and addressing mental health and substance use disorder needs in higher education settings, organizations that work directly with institutions to counsel them in providing easily accessible, effective and inclusive behavioral health support and selecting interventions, State higher education executive officers, State higher education agencies and systems, and other members of the public.

The Department seeks responses and supporting evidence to the specific questions below, as well as comments and supporting evidence on the identified general concepts and topics related to addressing mental health and substance use disorder needs in postsecondary education settings. When responding to this RFI, please address one or more of the following questions:

Successful Interventions

1. What metrics have you used to define success in supporting behavioral health (mental health and/or substance use disorders) for all students?

2. Does your institution (or the institution you support or attend) have a school-wide mental health and well-being strategy (a universal prevention strategy)? If so, please describe this

[1] *https://www.cdc.gov/injury/wisqars/index.html.*

[2] *https://www.sciencedirect.com/science/article/abs/pii/S1054139X1930254X?via%3Dihub.*

[3] *https://healthymindsnetwork.org/wp-content/uploads/2021/09/HMS_national_winter_2021.pdf.*

[4] *https://healthymindsnetwork.org/wp-content/uploads/2023/03/HMS_national_print-6-1.pdf.*

[5] *https://public.websites.umich.edu/~daneis/papers/MHacademics.pdf.*

[6] *https://healthymindsnetwork.org/wp-content/uploads/2021/09/HMS_national_winter_2021.pdf.*

[7] *https://www.samhsa.gov/data/sites/default/files/reports/rpt42728/NSDUHDetailedTabs2022/NSDUHDetailedTabs2022/NSDUHDetTabsSect5pe2022.htm.*

[8] *https://www.acenet.edu/Research-Insights/Pages/Pulse-Point-Surveys.aspx.*

[9] *https://www2.ed.gov/documents/coronavirus/reopening-3.pdf.*

strategy. To what extent were/are students engaged as partners in the design and implementation of these strategies?

3. How do you conduct universal assessments of your student body (or support institutions in their assessments) to determine their behavioral health needs?

4. In what ways is your assessment inclusive of diverse student populations, including culturally and linguistically inclusive and identity-safe practices?

5. What strategies or interventions do you believe have most improved behavioral health outcomes among students on your campus or the campuses you support, including systems-level interventions, population level interventions, interventions for high-risk students, or clinical interventions for students with mental health disorders? Please provide any accompanying evidence that informs your belief (*e.g.,* summaries of local outcomes data, locally conducted evaluation studies). Please also share the campus or external resources (*e.g.,* outside funding, digital mental health applications) that were necessary for implementation, including whether cost-sharing by the student was necessary (for example, from co-payments made by the student or billing the student's insurance).

6. What steps have you taken to help ensure that all students are aware of, and can easily access (including in ways that protect their privacy), mental health and substance use disorder supports? What steps have you taken to educate and train relevant staff (*e.g.,* faculty, coaches, housing/resident directors) about student behavioral health supports? How have you tailored outreach activities to meet the specific needs of particular student populations?

7. What steps have you taken to encourage students to seek mental health and substance use disorder supports, including any specific activities to address stigma? For students, what barriers or fears do you or your peers have with engaging with behavioral health treatment at your institution and to what extent, if any, has your institution sought to address these fears and barriers?

8. What steps have you or the institutions you support taken to tailor behavioral health interventions to the specific needs of particular student populations, including students from underserved communities and primarily off-campus populations, if applicable? What evidence (*e.g.,* summaries of local outcomes data, locally conducted evaluation studies) suggests these interventions are effective? If not already provided above, please consider including any evidence here.

9. What actions or partnerships have you formed (or helped institutions form) (*e.g.,* with parents/guardians, law enforcement to prevent unintentional harm to students in distress) to ensure continuity of care for students with mental health disorders as they transition to, between, and from college? What steps have you taken to involve parents/guardians in the event of an emergent behavioral health concern? Have you encountered challenges (for example, privacy concerns or other challenges/barriers) or developed successful strategies to engage parents/guardians to ensure continuity of care and services for students entering with behavioral health disorders, or those with previously undetected, undertreated, or untreated behavioral health concerns?

10. How is your institution ensuring that college students have access to health insurance and access to comprehensive behavioral health care?

11. What steps have you taken to ensure that students with mental health disabilities receive academic accommodations and other reasonable modifications under the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973 to give them each a meaningful opportunity to participate in and benefit from the school's academic and non-academic programs? How have you integrated your disability services offices into initiatives to develop strategies to meet the mental health needs of students on your campus? What steps have you taken to address any bias—by professors, staff, or other students—against students with mental health disabilities?

12. What kinds of trauma-focused services or supports are you providing to students who may have experienced trauma?

13. What efforts have you taken to develop, enhance, or implement suicide prevention and postvention plans? Which of these efforts do you believe have been most strongly associated with reductions in suicide attempts and completions on your campus (or the campuses you support)? Please provide any accompanying evidence that informs your belief (*e.g.,* summaries of local outcomes data, locally conducted evaluation studies). What is the process of connecting students to on and off-campus suicide prevention/postvention supports?

14. If applicable, please describe if your IHE or an IHE you support has received a Garrett Lee Smith Campus Suicide Prevention Grant from SAMHSA, please describe how these funds have been used to support suicide prevention efforts.

15. How have you provided supports for the mental health of your faculty, staff, graduate students, and post-doctoral students? Please describe any prevention strategies, assessment approaches, and interventions and how these supports addressed unique workforce challenges that emerged as a result of the COVID–19 pandemic? What evidence (*e.g.,* summaries of local outcomes data, locally conducted evaluation studies) suggests these practices are effective?

16. What has your institution (or the institutions you support) done to ensure students have access to qualified and well-resourced mental health and substance use disorder professionals? What has been effective in addressing any challenges with hiring, developing, and retaining these professionals, including increasing the diversity of professionals?

17. What steps have you (or institutions you support or attend) taken to decrease wait times for counseling centers and other available on-campus treatment options and services? Please provide any accompanying evidence including baseline data.

18. What kinds of peer support related to behavioral health, if any, have you implemented on your campus?

19. What role has your State played in helping to address mental health and substance use disorder needs on your campus, including through introducing and/or passing legislation, increasing funding, and engaging in State-wide initiatives?

Choosing and Implementing Interventions

20. What resources (*e.g.,* financial, staffing, technical) have you found to be most helpful in choosing and implementing evidence-based strategies to address mental health and substance use disorder needs on your campus (or the campuses you support)? For example, have you utilized SAMHSA's Evidence-based Guidebook ''Prevention and Treatment of Anxiety, Depression, and Suicidal Thoughts and Behaviors Among College Students''? [10]

21. What support would be helpful in choosing and implementing strategies to address behavioral health needs on your campus?

22. Reflecting on the challenges presented by the COVID–19 pandemic, how has your institution adapted or

[10] *https://www.samhsa.gov/resource/ebp/prevention-treatment-anxiety-college-students.*

refined its pandemic preparedness strategies to specifically address the mental health and well-being of students?

Role of the Department

23. How can the Department best support ongoing efforts inclusive and exclusive of additional funding? What are the preferred methods for collaboration and sustainable partnerships between the Department and behavioral health experts?

24. What unmet needs remain and what barriers have institutions encountered in providing mental health and substance use disorder supports for their students? How can the Department assist in helping to meet these needs and overcome barriers?

25. Are there any resources you would like the Department to provide?

26. If the Department were to hold a convening or other event, what specific topics or information would be most helpful to include in supporting institutions and the work of the field?

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–01605 Filed 1–25–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; American Overseas Research Centers Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for fiscal year (FY) 2024 for the American Overseas Research Centers (AORC) program, Assistance Listing Number 84.274A. This notice relates to the approved information collection under OMB control number 1840–0006.

DATES:

Applications Available: January 26, 2024.

Pre-Application Webinar Information: The Department will hold a pre-application webinar for prospective applicants. Detailed information regarding the webinar, including date and time, will be provided on the website for the AORC program at *https://www2.ed.gov/programs/iegpsaorc/applicant.html.*

Additionally, for prospective applicants that have never received a grant from the Department and those that are interested in learning more about the process, please review the grant funding basics resource at *https://www2.ed.gov/documents/funding-101/funding-101-basics.pdf.*

Deadline for Transmittal of Applications: March 26, 2024.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs.* Please note that these Common Instructions supersede the version published on December 27, 2021.

FOR FURTHER INFORMATION CONTACT: Cheryl E. Gibbs, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C103, Lyndon Baines Johnson (LBJ) Building, Washington, DC 20202. Telephone: (202) 453–5690. Email: *cheryl.gibbs@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The AORC program provides grants to consortia of institutions of higher education (IHEs) in the United States to establish or operate an overseas research center (Center) to promote postgraduate research, exchanges, and area studies. AORC grants may be used for all or a portion of the costs to operate and maintain the overseas Center; organize and manage conferences; develop or acquire teaching and research materials; acquire or preserve library collections; bring scholars and faculty to the Center to teach or conduct research; support the salaries for Center staff and visiting faculty and professional development stipends and fellowships; pay the travel costs for Center staff and project participants; and to publish and disseminate materials for the academic community and the public.

Priorities: Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are invitational priorities.

Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or an absolute preference over other applications.

These priorities are:

Invitational Priority 1—Professional Development Opportunities for Participants from Community Colleges, Historically Black Colleges and Universities, and Minority Serving Institutions.

Projects that provide professional development opportunities to participants from community colleges, Historically Black Colleges and Universities, and Minority-Serving Institutions. The opportunities may be provided domestically or overseas and may include curriculum development workshops to create new courses or to incorporate global content and competencies into existing courses, language instructional programs for the beginning to advanced levels, or participation in academic conferences relevant to the Center's focus.

For the purpose of this invitational priority—

Community college means ''junior or community college'' as defined in section 312(f) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1058(f)); or an ''institution of

higher education'' as defined in section 101 of the HEA, that awards degrees and certificates, more than 50 percent of which are not bachelor's (or an equivalent) or master's, professional, or other advanced degrees.

Historically Black Colleges and Universities means colleges and universities that meet the criteria set out in 34 CFR 608.2.

Minority-Serving Institution means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

Note: The institutions currently designated eligible under title III and title V of the HEA may be viewed at the following link: *https://www2.ed.gov/about/offices/list/ope/idues/eligibility.html.*

Invitational Priority 2—Open Access to Center-related Research, Instructional, and Scholarly Resources.

Projects that provide open access to Center-related research studies, conference proceedings, online libraries, digital archives, instructional materials, scholarly publications, and other resources related to the scholarly and cultural foci of the Center.

Program Authority: 20 U.S.C. 1128a and 1132–1132–7.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Department estimates that $1,347,635 will be available for new awards in the AORC program in FY 2024. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the current fiscal year, if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $53,000–$82,000 for each budget period of 12 months.

Estimated Average Size of Awards: $58,000 for each budget period of 12 months.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Consortia of United States (U.S.) IHEs that receive more than 50 percent of their funding from public or private U.S. sources, have a permanent presence in the country where the Center is located, and are organizations described in section 501(c)(3) of the Internal Revenue Code, which are exempt from taxation under section 501(a) of such Code.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an 8 percent restricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

4. *Build America, Buy America Act:* This program is not subject to the Build America, Buy America Act (Pub. L. 117–58) domestic sourcing requirements.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *https://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the AORC grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to post on our website the abstracts of all funded applications, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79.

4. *Funding Restrictions:* We reference regulations outlining funding

restrictions in the *Applicable Regulations* section of this notice.

5. *Recommended Page Limit:* The application narrative (Part III) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, *except* the text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, Application for Federal Assistance cover sheet (SF 424); the Supplemental Information Form SF 424B; Part II, ED 524 (Summary Budget A) and the detailed budget justification (Summary Budget C); or Part IV, assurances, and certifications. The page limit also does not apply to the one-page abstract, the curriculum vitae, the bibliography, or the letters of support. However, the recommended page limit does apply to the entirety of the application narrative.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210. The total maximum score for the selection criteria is 100 points. The maximum number of points for each criterion is indicated in parentheses.

The Secretary evaluates all applications for a project under this program using the following criteria:

(a) *Need for project* (up to 20 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (up to 20 points)

(b) *Quality of the project design* (up to 10 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (up to 5 points)

(ii) The extent to which fellowship recipients or other project participants are to be selected based on academic excellence. (up to 5 points)

(c) *Quality of project services* (up to 25 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points)

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (up to 10 points)

(ii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services. (up to 10 points)

(d) *Quality of project personnel* (up to 15 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (up to 5 points)

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (up to 5 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (up to 5 points)

(e) *Adequacy of resources* (up to 15 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (up to 5 points)

(ii) The extent to which the budget is adequate to support the proposed project. (up to 5 points)

(iii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits. (up to 5 points)

(f) *Quality of project evaluation* (up to 15 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are appropriate to the context within which the project operates. (up to 5 points)

(ii) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (up to 5 points)

(iii) The extent to which the methods of evaluation will provide timely guidance for quality assurance. (up to 5 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

All applications submitted to the FY 2024 AORC program competition will be evaluated and scored by peer reviewers with expertise in are area studies, modern foreign languages, global competencies, and postgraduate research.

The Department's G6 e-Reader system will produce the rank order listing of all applications in the competition based

on the scores that peer reviewers assigned to the selection criteria. In situations where two or more applications are tied with the same overall score in the rank order listing, we will use the scores for selection criterion (a) Need for the project as a tiebreaker. If this criterion does not resolve the tied scores, we will use the scores for criterion (c) Quality of project services as the tiebreaker.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that, over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S.

Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this program competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110 (b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

Note: Grantees under this competition will submit their performance reports electronically using the International Resource Information System (IRIS), the web-based reporting system for the International and Foreign Language Education office. Information about the reporting system and the AORC performance report instructions may be viewed at *http://iris.ed.gov/iris/pdfs/AORC.pdf*.

5. *Performance Measures:* IFLE has established the following performance measure for the AORC program for the purpose of Department reporting under 34 CFR 75.110:

The number of individuals conducting postgraduate research utilizing the services of the overseas Centers.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the

grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser H. Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–01443 Filed 1–25–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Falcon and Amistad Projects—Rate Order No. WAPA–216

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of firm power formula rate for the Falcon and Amistad Projects.

SUMMARY: The Colorado River Storage Project Management Center (CRSP MC) of the Western Area Power Administration (WAPA) proposes to extend the existing firm power formula rate, without any changes, for the Falcon and Amistad Projects (Projects) through June 7, 2029. The existing firm power formula rate expires on June 7, 2024.

DATES: A consultation and comment period will begin January 26, 2024 and end February 26, 2024. The CRSP MC will accept written comments any time during the consultation and comment period.

ADDRESSES: Written comments and requests to be informed of Federal Energy Regulatory Commission (FERC) actions concerning the proposed extension submitted by WAPA to FERC for approval should be sent to: Rodney Bailey, CRSP Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 1800 South Rio Grande Avenue, Montrose, CO 81401, or email: *CRSPMC-rateadj@wapa.gov.* The CRSP MC will post information about the proposed formula rate extension and written comments received to its website at: *www.wapa.gov/about-wapa/about-wapa/regions/crsp/rates/rate-order-216.*

FOR FURTHER INFORMATION CONTACT: Tamala Gheller, Rates Manager, Colorado River Storage Project Management Center, Western Area Power Administration, 970–240–6545, or email: *CRSPMC-rate-adj@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Falcon and Amistad Dams are features of international water storage projects located on the Rio Grande River between Texas and Mexico. The portion of the dams located in the United States is operated by the United States International Boundary and Water Commission (USIBWC). Under arrangements with the United States Department of State and USIBWC, WAPA is the Federal agency responsible for marketing and selling the electricity generated at these facilities. WAPA markets the power generated at the Falcon and Amistad Dams as a combined product to only one customer: South Texas Electric Cooperative. The cost of the power is determined by a formula rate. This formula rate was initially approved by the Federal Power Commission (FPC), the predecessor to FERC, in FPC Docket No. E–9566 on August 12, 1977 (59 FPC 1653), for a 5-year period effective on the date of initial operation of Amistad Power Plant, June 8, 1983.[1] The formula rate has been subsequently extended and re-approved without change. The current formula rate was approved in 2009 [2] and extended in 2014 and 2019.

Most recently, on June 20, 2019, FERC approved and confirmed Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate under Rate Order No. WAPA–186 for a 5-year period through June 7, 2024.[3] This schedule applies to firm energy sales. In accordance with 10 CFR 903.23(a),[4] the CRSP MC is proposing to extend the existing formula rate under Rate Schedule Falcon and Amistad Projects' Firm Power Formula Rate for the period of June 8, 2024, through June 7, 2029. The existing formula rate is viewable on the CRSP MC website at: *www.wapa.gov/about-wapa/regions/crsp/rates/amistad-history.* The formula rate calculates the amount WAPA must annually repay to the Department of the Treasury for the United States' investment in the Falcon and Amistad hydroelectric facilities, with interest, as well as associated operation, maintenance, and administrative costs. This annual installment is collected in 12 monthly payments and is independent of the amount of available generation. The existing formula rate provides sufficient revenue to pay all annual costs, including interest expense, and repay investment within the allowable period consistent with the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2.

In accordance with 10 CFR 903.23(a), the CRSP MC has determined it is not necessary to hold public information or public comment forums for this rate action but is initiating a 30-day consultation and comment period to give the public an opportunity to comment on the proposed extension. The CRSP MC will review and consider all timely public comments at the conclusion of the consultation and comment period and adjust the proposal as appropriate.

Legal Authority

By Delegation Order No. S1–DEL–RATES–2016, effective November 19, 2016, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the WAPA

[1] A 5-year rate extension of this same formula rate through June 7, 1993, was approved by FERC on June 20, 1988, at 44 FERC ¶ 62,058. Subsequent 5-year extensions of the same formula rate have been approved by FERC; the most recent approval was on June 20, 2019, in Docket No. EF19–3–000, which approved the same formula rate through June 7, 2024.

[2] *Order Confirming and Approving Rate Schedule on a Final Basis,* FERC Docket No. EF09–5101–000, 129 FERC ¶ 62,206 (2009).

[3] *Order Confirming and Approving Rate Schedule on a Final Basis,* FERC Docket No. EF19–3–000, 167 FERC ¶ 62,187 (2019).

[4] 50 FR 37835 (Sept. 18, 1985) and 84 FR 5347 (Feb. 21, 2019).

Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, or to remand or disapprove such rates, to FERC. By Delegation Order No. S1–DEL–S3–2023, effective April 10, 2023, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary for Infrastructure. By Redelegation Order No. S3–DEL–WAPA1–2023, effective April 10, 2023, the Under Secretary for Infrastructure further redelegated the authority to confirm, approve, and place such rates into effect on an interim basis to WAPA's Administrator.

Ratemaking Procedure Requirements

Environmental Compliance

WAPA is in the process of determining whether an environmental assessment or an environmental impact statement should be prepared or if this action can be categorically excluded from those requirements.[5]

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Signing Authority

This document of the Department of Energy was signed on January 22, 2024, by Tracey A. LeBeau, Administrator, Western Area Power Administration, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

[5] In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

Signed in Washington, DC, on January 23, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–01587 Filed 1–25–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–107]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed January 12, 2024 10 a.m. EST Through January 22, 2024 10 a.m. EST Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240007, Revised Draft, USAF, CA, KC–46A Main Operating Base 5 Beddown, *Comment Period Ends:* 03/11/2024, *Contact:* Austin Naranjo 478–222–9225.

EIS No. 20240008, Final, USACE, FL, North of Lake Okeechobee Storage Reservoir Section 203 Study, *Review Period Ends:* 02/26/2024, *Contact:* Dr. Gretchen Ehlinger 904–232–1665.

EIS No. 20240009, Draft, NMFS, AK, Issuance of an Incidental Take Statement under the Endangered Species Act for Salmon Fisheries in Southeast Alaska Subject to the 2019 Pacific Salmon Treaty Agreement and Funding to the State of Alaska to Implement the 2019 Pacific Salmon Treaty Agreement, *Comment Period Ends:* 03/11/2024, *Contact:* Kelly Cates 907–586–7221.

EIS No. 20240010, Final, USFS, UT, Ashley National Forest Land Management Plan Revision, *Review Period Ends:* 02/26/2024, *Contact:* Anastasia Allen 406–270–9241.

EIS No. 20240011, Draft, USACE, CA, San Francisco Waterfront Coastal Flood Study, CA, *Comment Period Ends:* 03/29/2024, *Contact:* Melinda Fisher 918–669–7423.

EIS No. 20240012, Draft, NOAA, WA, Expenditure of Funds to Increase Prey Availability for Southern Resident Killer Whales, *Comment Period Ends:* 03/11/2024, *Contact:* Lance Kruzic 541–802–3728.

Amended Notice:

EIS No. 20230179, Third Draft Supplemental, USACE, CA, American River Common Features, 2016 Flood Risk Management Project, Sacramento, California Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report XIV, *Comment Period Ends:* 02/23/2024, *Contact:* Guy Romine 916–496–4646.

Revision to FR Notice Published 12/22/2023; Extending the Comment Period from 02/05/2024 to 02/23/2024.

Dated: January 23, 2024.

Julie Smith,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024–01591 Filed 1–25–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0957; FRL–11675–01–OCSPP]

United States Department of Justice and Parties to Certain Litigation; Transfer of Information Potentially Containing Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces that pesticide-related information submitted to the Environmental Protection Agency (EPA) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to the U.S. Department of Justice (DOJ) and parties to certain litigation. This transfer of data is in accordance with the CBI regulations governing the disclosure of potential CBI in litigation.

DATES: Access to this information by DOJ and the parties to certain litigation is ongoing and expected to continue during the litigation as discussed in this document.

FOR FURTHER INFORMATION CONTACT: Charles Smith, Registration Division (7505M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–2659; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION: This document is being provided pursuant to

40 CFR 2.209(d) to inform affected businesses that EPA, via DOJ, will provide certain information to the parties and the Court in the matter of *Center for Food Safety, et al.* v. *U.S. Environmental Protection Agency, et al.* (Case No. 1:23–cv–1633) (D.D.C.). The information is contained in documents that have been submitted to EPA pursuant to FIFRA and FFDCA by pesticide registrants or other data-submitters, including information that has been claimed to be, or determined to potentially contain, CBI. In the pending litigation, petitioners seek judicial review of EPA's decision of January 11, 2022, to extend the time-limited registrations for GF–3335 Enlist One, an herbicide containing the active ingredient 2,4-dichlorophenoxyacetic acid choline salt (''2,4-D''), and Enlist Duo an herbicide containing the active ingredients 2,4-D and glyphosate dimethylammonium salt (''glyphosate''), as well as EPA's decision of March 29, 2022, to allow use of those herbicides in additional counties.

The documents are being produced as part of the Administrative Record of the decisions at issue and include documents that registrants or other data-submitters may have submitted to EPA regarding the Enlist One and Enlist Duo pesticide products, and that may be subject to various release restrictions under federal law. The information includes documents submitted with pesticide registration applications and may include CBI as well as scientific studies subject to the disclosure restrictions of section 10(g) of FIFRA, 7 U.S.C. 136h(d).

All documents that may be subject to release restrictions under federal law are designated as ''Protected Information'' in the certified list of record materials and are designated as ''Protected Information'' under a Protective Order that the Court entered on December 19, 2023. The Protective Order precludes public disclosure of any such documents by the parties in this action who have received the information from EPA, unless a party successfully obtains a de-designation as Protected Information of any portion of the Administrative Record via the procedure described in paragraph 6 of the Protective Order and limits the use of such documents to litigation purposes only. Further, paragraph 6(h) of the Protective Order states: ''At any time, the court may de-designate any portion of the administrative record without advanced notice to the parties.'' If filed with the Court, such documents would be filed under seal and would not be available for public review, unless the information contained in the document has been determined to not be subject to section 10(g) of FIFRA and all CBI has been redacted.

At the conclusion of the litigation, the Protective Order requires that record material EPA designates as ''Protected Information'' be destroyed or returned to EPA.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: January 18, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2024–01503 Filed 1–25–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OMS–2023–0605; FRL–11607–01–OMS]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Renewal)

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (EPA ICR Number 2434.204, OMB Control Number 2030–0051) 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 May 31, 2024. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before March 26, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OMS–2023–0605, to EPA online using *www.regulations.gov* (our preferred method), by email to *docket_oms@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Danny McGrath, Information Engagement Division (IED), Office of Information Management (OIM), 2821T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564–8434; *mcgrath.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through May 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 notice 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 *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate 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** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The information collection activity provides the Agency with an opportunity to efficiently engage its customers and stakeholders by gathering qualitative information about their interaction with Agency. Getting such feedback in a timely manner is critical if the Agency is to know how and where it should focus while seeking to

improve, or expand upon, its products and services.

The Agency will submit a collection request for approval under this generic clearance only if the collections are voluntary; low burden and low-cost for both the respondents and the Federal Government; noncontroversial; targeted to respondents who have experience with the program or may have experience with the program in the near future; and abstain from collecting personally identifiable information (PII) to the greatest extent possible. Information gathered will be used internally for general service improvement and program management purposes and released publicly only in an anonymized or aggregated fashion. It will not be used in statistical analysis intended to yield results that can be generalized to the population of study nor will it be used to substantially inform influential policy decisions.

Form Numbers: None.

Respondents/affected entities: Individuals and households; businesses and organizations; State, local or Tribal government.

Respondent's obligation to respond: Voluntary.

Estimated number of respondents: 180,000 (total).

Frequency of response: Once per request.

Total estimated burden: 45,000 hours (per year); [burden is defined at 5 CFR 1320.03(b)].

Total estimated cost: There are no annualized capital or operation & maintenance costs.

Changes in the Estimates: EPA is not anticipating a significant change in burden in this ICR compared with the ICR currently approved by OMB.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–01521 Filed 1–25–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0812; FR ID 198783]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 26, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0812.

Title: Fee Assessment Adjustment, Fee Relief and Fee Exemption.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, businesses and other for-profit entities, not-for-profit entities, Federal Government and State, local and Tribal government.

Number of Respondents and Responses: 574 respondents; 574 responses.

Estimated Time per Response: 0.25–1.25 hours.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for these fee collections is contained in 47 U.S.C. 154(i), 154(j), 158, 159, 159a and 303.

Total Annual Burden: 244 hours.

Total Annual Cost: No cost.

Needs and Uses: The Commission requires that nonprofit entities seeking a statutory exemption from payment of application or regulatory fees submit documentation, such as an IRS Determination Letter, a state charter indicating nonprofit status, proof of church affiliation indicating tax exempt status or the like, to establish nonprofit status, and if later requested by the Commission, to provide current evidence of exempt status. The Commission allows commercial mobile

radio service (CMRS) and broadcast (television and radio) licensees and interstate telecommunications service providers (ITSPs) to submit, prior to the annual regulatory fee payment deadline, updates or corrections to the data the Commission relies upon to assess their annual regulatory fees, to request that their annual regulatory fees be adjusted accordingly. The Commission is permitted by statute to waive, reduce or defer payment of regulatory or application fees upon a showing of good cause and that the relief sought would promote the public interest. Parties seeking waiver, reduction or deferral of their fees submit documentation, such as financial records demonstrating financial hardship, to demonstrate good cause and that the relief sought promotes the public interest.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–01518 Filed 1–25–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 198756]

Open Commission Meeting Thursday, January 25, 2024

January 18, 2024.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 25, 2024, which is scheduled to commence at 10:30 a.m. in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC.

While attendance at the Open Meeting is available to the public, the FCC headquarters building is not open access and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the Open Meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: *www.fcc.gov/visit.* Open Meetings are streamed live at: *www.fcc.gov/live* and on the FCC's YouTube channel.

Item No.	Bureau	Subject
1	Public Safety and Homeland Security	*Title:* Resilient Networks (PS Docket No. 21–346); Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications (PS Docket No.15–80); New Part 4 of the Commission's Rules Concerning Disruptions to Communications (ET Docket No. 04–35). *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking to ensure participation in, and enhance the use of, its Disaster Information Reporting System, where service providers report on their operational status during emergencies.
2	Public Safety and Homeland Security	*Title:* Location-Based Routing for Wireless 911 Calls (PS Docket No. 18–64). *Summary:* The Commission will consider a Report and Order requiring wireless providers to implement location-based routing for wireless calls and real-time texts (RTT) to 911 in order to reduce misrouting and improve emergency response times.
3	Space	*Title:* Mitigation of Orbital Debris in the New Space Age (IB Docket No. 18–313). *Summary:* The Commission will consider an Order on Reconsideration addressing the issues raised in three petitions for reconsideration filed in response to the Orbital Debris Mitigation Report and Order released in 2020 which comprehensively updated the Commission's existing rules regarding orbital debris mitigation.
4	Media	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter from the Media Bureau.
5	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.
6	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.
7	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.
8	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.
9	Enforcement	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.
10	Wireless Tele-Communications	*Title:* Modernizing and Expanding Access to the 70/80/90 GHz Bands (WT Docket No. 20–133) *Summary:* The Commission will consider a Report and Order and Further Notice of Proposed Rulemaking that would adopt new rules and update preexisting rules for the 70/80/90 GHz bands. The item would authorize certain point-to-point links to endpoints in motion in the 70 GHz and 80 GHz bands for aeronautical and maritime use; provide for smaller, lower-cost antennas to facilitate backhaul service in those bands; and adopt changes to the link registration process. The item would also seek comment on the potential inclusion of Fixed Satellite Service earth stations in the light-licensing regime for the 70 GHz and 80 GHz bands.

* * * * *

The meeting will be webcast at: *www.fcc.gov/live.* Open captioning will be provided as well as a text only version on the FCC website. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

Press Access—Members of the news media are welcome to attend the meeting and will be provided reserved seating on a first-come, first-served basis. Following the meeting, the Chairwoman may hold a news

conference in which she will take questions from credentialed members of the press in attendance. Also, senior policy and legal staff will be made available to the press in attendance for questions related to the items on the meeting agenda. Commissioners may also choose to hold press conferences. Press may also direct questions to the Office of Media Relations (OMR): *MediaRelations@fcc.gov.* Questions about credentialing should be directed to OMR.

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–01520 Filed 1–25–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0004; FR ID 198362]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 26, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0004.

Title: Sections 1.1307 and 1.1311, Guidelines for Evaluating the Environmental Effects of Radiofrequency Exposure.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and State, local or Tribal government.

Number of Respondents and Responses: 233,596 respondents; 233,596 responses.

Estimated Time per Response: 0.0833 hours (5 minutes)—20 hours.

Frequency of Response: On occasion reporting requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this Information collection is contained in 47 U.S.C. 154, 302, 303, and 307.

Total Annual Burden: 26,005 hours.

Total Annual Costs: $1,958,335.

Needs and Uses: The Commission will submit this revision of a currently approved information collection to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance.

This information collection is a result of responsibility placed on the FCC by the National Environmental Policy Act (NEPA) of 1969. NEPA requires that each federal agency evaluate the impact of ''major actions significantly affecting the quality of the human environment.'' It is the FCC's opinion that this is the most efficient and reasonable method of complying with NEPA with regard to the environmental issue of radiofrequency radiation from FCC-regulated transmitters.

To account for rule changes implemented by 2019 rulemaking item FCC 19–126, ET Docket Nos. 03–137 and 13–184, the Commission had previously estimated the burden to respondents for the collection of information in two components: the recurring annual burden, and the one-time burden of transitioning to the rule changes for existing parties. The period for transition to those rule changes has now passed, and so the Commission has now revised its estimates to remove consideration of the one-time transition burden.

To update burden estimates based on the most recently available data, the Commission has also adjusted the total number of respondents/responses, the total annual hourly burden, and the total annual costs from the previous estimates, based on licensing data for calendar year 2022.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–01519 Filed 1–25–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0761; FR ID 198361]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 26, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0761.

Title: Section 79.1, Closed Captioning of Video Programming, CG Docket No. 05–231.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; individuals or households; and not-for-profit entities.

Number of Respondents and Responses: 68,007 respondents; 510,514 responses.

Estimated Time per Response: 0.5 (30 minutes) to 30 hours.

Frequency of Response: Annual, monthly, on occasion, and ongoing reporting requirements; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this obligation is found at section 713 of the Communications Act of 1934, as amended, 47 U.S.C. 613, and implemented at 47 CFR 79.1.

Total Annual Burden: 766,435 hours.

Annual Cost Burden: $35,324,172.00.

Needs and Uses: The Commission seeks to extend existing information collection requirements in its closed captioning rules (47 CFR 79.1), which require that, with some exceptions, all new video programming, and 75 percent of ''pre-rule'' programming, be closed captioned. The existing collections include petitions by video programming providers, producers, and owners for exemptions from the closed captioning rules, responses by commenters, and replies; complaints by viewers alleging violations of the closed captioning rules, responses by video programming distributors (VPDs) and video programmers, recordkeeping in support of complaint responses, and compliance ladder obligations in the event of a pattern or trend of violations; recordkeeping of monitoring and maintenance activities; caption quality best practices procedures; making video programming distributor contact information available to viewers in phone directories, on the Commission's website and the websites of video programming distributors (if they have them), and in billing statements (to the extent video programming distributors issue them); and video programmers filing of contact information and compliance certifications with the Commission.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–01526 Filed 1–25–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 198702]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) has modified an existing system of records, FCC/OWD–1, Reasonable Accommodation Requests, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The FCC's Office of Workforce Diversity (OWD) uses this system to provide a method by which the FCC can identify Commission employees who have requested accommodations related to: religion; disability; or pregnancy, childbirth, or related medical conditions. Information on the disposition of each request is also maintained in this system.

DATES: This modified system of records will become effective on January 26, 2024. Written comments on the routine uses are due by February 26, 2024. The routine uses in this action will become effective on February 26, 2024 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, Attorney-Advisor, Office of General Counsel, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or to *privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: This notice serves to update and modify FCC/OWD–1 as a result of the various necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/OWD–1 system of records include:

1. Updating the name of the system of records from FCC/OWD–1, Reasonable Accommodation Requests, to FCC/OWD–1, FCC Accommodation Requests, to reflect the expansion of the system to include religious and pregnancy/childbirth accommodations in addition to reasonable accommodations related to disability.

2. Modifying the Authority for Maintenance of the System, Categories of Individuals, Categories of Records, and Record Source Categories sections to reflect expansion of the system of records.

3. Updating and/or revising language in six routine uses (listed by current routine use number): (1) Litigation and (2) Adjudication (now two separate routine uses); (3) Law Enforcement and Investigation; (4) Congressional Inquiries; (5) Government-wide Program Management and Oversight; and (7) Nonfederal Personnel.

The system of records is also updated to reflect various administrative changes related to the system managers and system addresses; policy and practices for storage, retention, disposal and retrieval of the information; administrative, technical, and physical safeguards; and updated notification, records access, and contesting records procedures.

SYSTEM NAME AND NUMBER:

FCC/OWD–1, FCC Accommodation Requests.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Workplace Diversity (OWD), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGERS:

Office of Workplace Diversity (OWD), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554; and/or Security Operations Center, Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order (E.O.) 13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation; EEOC, Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, 29 CFR part 1615; Rehabilitation Act of 1973, 29 U.S.C. 12101 et seq.; 29 CFR 1630, Title VII of the Civil Rights Act of 1964, as amended, 29 U.S.C. Part 1605; U.S. Equal Employment Opportunity Commission's Compliance Manual, Section 12: Religious Discrimination (January 15, 2021); U.S. Equal Employment Opportunity Commission's Questions and Answers: Religious Discrimination in the Workplace (July 22, 2008); The Pregnant Workers Fairness Act (PWFA), Pub. L. 117–328, 136 Stat. 4459 (2022).

PURPOSES OF THE SYSTEM:

This system provides a method by which the FCC can identify Commission employees who have requested accommodations related to: religion; disability; or pregnancy, childbirth, or related medical conditions. Information on the disposition of each request is also maintained in this system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of records in this system are FCC employees (including, but not limited to full-time and part-time Commission employees, temporary hires, interns, and co-op students.) who have requested accommodations.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include but are not limited to the information that FCC employees (including, but not limited to full time, part time, temporary hires, interns, and co-op students) provide when requesting accommodation, including through submission of FCC Forms 5626, 5627, and 5652. These categories of records include: applicant/employee's name, phone number, email address; employee's office, supervisor's name and phone number; date of request; types of accommodation(s) requested; reason(s) for request; specific information, supporting documentation, and related materials regarding medical condition, including but not limited to the characteristics of impairment, job function difficulties, current limitation(s), past accommodation(s), specific accommodation(s), permanent or temporary condition(s); specific information, supporting documentation, and related materials regarding pregnancy, childbirth, or related conditions; specific information, supporting documentation, and related materials regarding requests for religious accommodations; signatures of applicant and receiving official; FCC–ACC Number (reasonable accommodations number); and disposition of request.

RECORD SOURCE CATEGORIES:

The sources for the information in this system include, but are not limited to FCC employees and applicants (including, but not limited to full-time and part-time Commission employees, temporary hires, interns, and co-op students), who have requested accommodations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in their official capacity; (c) any employee of the FCC in their individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation.

2. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in their official capacity; or (c) any employee of the FCC in their individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation.

3. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation and determines that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, consent decree, order, or other compulsory obligation, the FCC may disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

4. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the written request of that individual.

5. Government-wide Program Management and Oversight—To disclose information to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the *Freedom of Information Act* (FOIA); or to the Office of Management and Budget (OMB)to obtain that office's advice regarding obligations under the Privacy Act.

6. Labor Relations—To officials of labor organizations recognized under 5 U.S.C. Chapter 71 upon receipt of a formal request and in accord with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

7. Breach Notification—To appropriate agencies, entities, and persons when (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity.

POLICES AND PRACTICES FOR STORAGE OF RECORDS:

This an electronic system of records that resides on the FCC's network. Paper documents and files including paper copies of form email correspondence, notes, and other related records are stored in file cabinets in the OWD office suite.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in this system's paper document files and records is retrieved by searching by the individual's last name or the (corresponding) ACC number. Information in the electronic records and files is retrieved by the individual's last name, ACC number, office/workstation address, bureau/office, and accommodations request date.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

OWD staff maintains the information in this system in accordance with the National Archives and Records Administration (NARA) General Records Schedule 2.3, Employee Relations Records (DAA–GRS–2018–0002), specifically: DAA–GRS–2022–0001 (Religious Accommodations Revision); DAA–GRS–2018–0002–0001 (Employee Relations Programs' Administrative Records); and DAA–GRS–2018–0002–0002 (Reasonable Accommodation Case Files).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC or a vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic and paper files is restricted to authorized employees and contractors; and in the case of electronic files to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST). The paper documents, files, and related materials are stored in approved security containers, which are locked when not in use and/or at the end of the business day. These paper documents are stored in locked file cabinets in the OWD office suite, when not in use and/or at the end of day. These paper documents are destroyed by shredding when no longer needed.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest information pertaining to him or her in the system of records should follow the Notification Procedures below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting record access or amendment must also comply with the FCC's Privacy Act regulations regarding verification of identity as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

84 FR 3163 (Feb. 11, 2019)

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–01515 Filed 1–25–24; 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 February 12, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *Castle Creek Capital Partners VI, LP, San Diego, California;* to acquire voting shares of Tri-County Financial Group, Inc., and thereby indirectly acquire voting shares of First State Bank, both of Mendota, Illinois.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–01602 Filed 1–25–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 February 12, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *Oxford Bank Corporation, Oxford, Michigan;* to indirectly acquire voting securities of NO_X, LLC, Oxford, Michigan, and thereby engage de novo in extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–01603 Filed 1–25–24; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–Q–2024–01; Docket No. 2024–0002; Sequence No. 50]

Federal Secure Cloud Advisory Committee; Notification of Upcoming Meeting

AGENCY: Federal Acquisition Service (Q), General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act (FACA), as amended, GSA is hereby giving notice of an open public meeting of the Federal Secure Cloud Advisory Committee (FSCAC). Information on attending and providing public comment is under the **SUPPLEMENTARY INFORMATION** section.

DATES: The open public meeting will be held on Thursday, February 15, 2024, from 1 p.m. to 2:30 p.m., eastern standard time (EST). The agenda for the meeting will be made available prior to the meeting online at *https://gsa.gov/fscac.*

ADDRESSES: The meetings will be accessible via webcast. Registrants will receive the webcast information before the meeting.

FOR FURTHER INFORMATION CONTACT: Michelle White, Designated Federal Officer (DFO), FSCAC, GSA, 703–489–4160, *fscac@gsa.gov.* Additional

information about the Committee, including meeting materials and agendas, will be available online at *https://gsa.gov/fscac.*

SUPPLEMENTARY INFORMATION:

Background

GSA, in compliance with the FedRAMP Authorization Act of 2022, established the FSCAC, a statutory advisory committee in accordance with the provisions of FACA, as amended (5 U.S.C. 10). The Federal Risk and Authorization Management Program (FedRAMP) within GSA is responsible for providing a standardized, reusable approach to security assessment and authorization for cloud computing products and services that process unclassified information used by agencies.

The FSCAC will provide advice and recommendations to the Administrator of GSA, the FedRAMP Board, and agencies on technical, financial, programmatic, and operational matters regarding the secure adoption of cloud computing products and services. The FSCAC will ensure effective and ongoing coordination of agency adoption, use, authorization, monitoring, acquisition, and security of cloud computing products and services to enable agency mission and administrative priorities. The purposes of the Committee are:

- To examine the operations of FedRAMP and determine ways that authorization processes can continuously be improved, including the following:
  - Measures to increase agency reuse of FedRAMP authorizations.
  - Proposed actions that can be adopted to reduce the burden, confusion, and cost associated with FedRAMP authorizations for cloud service providers.
  - Measures to increase the number of FedRAMP authorizations for cloud computing products and services offered by small businesses concerns (as defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)).
  - Proposed actions that can be adopted to reduce the burden and cost of FedRAMP authorizations for agencies.
- Collect information and feedback on agency compliance with, and implementation of, FedRAMP requirements.
- Serve as a forum that facilitates communication and collaboration among the FedRAMP stakeholder community.

The FSCAC will meet no fewer than three (3) times a calendar year. Meetings shall occur as frequently as needed, called, and approved by the DFO.

Purpose of the Meeting and Agenda

The February 15, 2024 public meeting will be dedicated to the Committee members' feedback and discussion on GSA's draft framework for prioritizing critical and emerging technologies offerings in the Federal Risk and Authorization Management Program authorization process, as directed in the Executive Order 14110 on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence. The meeting agenda and draft framework will be posted on *https://gsa.gov/fscac* prior to the February 15, 2024 meeting.

Meeting Attendance

This virtual meeting is open to the public. Meeting registration and information is available at *https://gsa.gov/fscac.* Registration for attending the virtual meeting is highly encouraged by 5 p.m. EST, on Monday, February 12, 2024. After registration, individuals will receive instructions on how to attend the meeting via email.

For information on services for individuals with disabilities, or to request accommodation for a disability, please email the FSCAC staff at *FSCAC@gsa.gov* at least 10 days prior to the meeting date. Live captioning may be provided virtually.

Public Comment

Members of the public will have the opportunity to provide oral public comment during the FSCAC meeting by indicating their preference when registering. Written public comments can be submitted at any time by completing the public comment form on our website, *https://gsa.gov/fscac.* All written public comments will be provided to FSCAC members in advance of the meeting if received by Wednesday, February 7, 2024.

Elizabeth Blake,

Senior Advisor, Federal Acquisition Service, General Services Administration.

[FR Doc. 2024–01579 Filed 1–25–24; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–0106]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Preventive Health and Health Services Block Grant'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 1, 2023 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Preventive Health and Health Services Block Grant (OMB Control No. 0920–0106, Exp. 2/29/2024)—Revision—National Center for State, Tribal, Local and Territorial Public Health Infrastructure and Workforce (NCSTLTPHIW), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The CDC's National Center for State, Tribal, Local and Territorial Public Health Infrastructure and Workforce (NCSTLTPHIW) plays a vital role in helping health agencies work to enhance their capacity and improve their performance to strengthen the public health system on all levels. NCSTLTPHIW is CDC's primary connection to health officials and leaders of State, Tribal, local, and Territorial public health agencies, as well as other government leaders who work with health departments.

NCSTLTPHIW administers the Preventive Health and Health Services Block Grant (PHHSBG) for health promotion and disease prevention programs. Sixty-one (61) recipients (50 states, the District of Columbia, two American Indian Tribes, five U.S. territories, and three freely associated states) receive block grant funds to address locally-defined public health needs in innovative ways. The PHHSBG allows awardees to prioritize the use of funds to fill funding gaps in programs that deal with leading causes of death and disability, as well as the ability to respond rapidly to emerging health issues, including outbreaks of food-borne infections and water-borne diseases.

As specified in the authorizing legislation for the PHHSBG, CDC collects information from recipients to monitor their objectives and activities. Since 2021, this information has been reported through a web-based electronic system, the Block Grant Information System (BGIS). Each recipient is required to submit a work plan with its selected health outcome objectives, as well as descriptions of the health problems, identified target populations (including portions of those populations disproportionately affected by the health problems), and activities to be addressed in the planned work.

In this Revision, CDC requests OMB approval to subdivide the previously approved annual Workplan (12 hours) into two sections: the ''Workplan Start and Advisory Committee Questions Worksheet'' (two hours) and the ''Workplan Program Questions Worksheet'' (10 hours). There are no changes to the previously approved questions or the net annualized burden estimate for the Workplan (732 hours). However, questions have been regrouped to improve logical flow, and selected instructions to respondents have been revised for clarity and ease of use. The Annual Progress Report will be continued without changes in total burden hours (671 annualized burden hours), though the burden table is revised to describe how program collects two different sets of questions within the Annual Progress Report (Interim progress questions (seven hours) and Final progress questions (four hours). These revisions to the burden table enable program to better monitor and provide technical assistance to respondents. The Recipient Information Collection will be deleted from the burden table (−122 annualized burden hours). The BGIS will retain this information, however, the one-time burden of entering the Recipient Information was accounted for in the previous approval period.

CDC will continue to use the PHHSBG information collection to identify activities and personnel supported with Block Grant funding, monitor expenditure of funds and recipients' progress toward their objectives, conduct compliance reviews of Block Grant recipients, and promote the use of evidence-based guidelines and interventions. OMB approval is requested for three years. All information is submitted annually through the electronic BGIS. The total annualized estimated burden is 1,403 hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
PHHS Block Grant Coordinator	Workplan start and advisory committee questions worksheet.	61	1	2
PHHS Block Grant Coordinator	Workplan program questions worksheet	61	1	10
PHHS Block Grant Coordinator	Annual Progress Report template (subset of Interim Progress questions).	61	1	7
PHHS Block Grant Coordinator	Annual Progress Report template (subset of Final Progress questions).	61	1	4

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–01549 Filed 1–25–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–24CB; Docket No. CDC–2024–0004]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Evaluation of an Online Prostate Cancer Decision Aid. This three-arm, randomized controlled

trial (RCT) includes eight forms of data collection including surveys and interviews and will evaluate the impact of a virtual human decision aid to help improve the quality of prostate cancer screening and treatment decisions.

DATES: CDC must receive written comments on or before March 26, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2024–0004 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;
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; and
5. Assess information collection costs.

Proposed Project

Evaluation of an Online Prostate Cancer Decision Aid—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Division of Cancer Prevention and Control (DCPC) is requesting a new, three-year OMB approval to conduct a three-arm, randomized controlled trial (RCT) to evaluate the impact of a virtual human decision aid to help improve the quality of prostate cancer screening and treatment decisions.

Talk to Nathan About Prostate Cancer Screening (hereafter referred to as Nathan) is DCPC's online, interactive, human simulation decision aid designed to help men learn and make informed decisions about prostate cancer screening. A small, preliminary evaluation of Nathan showed promise in increasing men's knowledge about prostate cancer and likelihood of engaging in shared decision-making about prostate cancer screening with their health care providers. At this time, a larger, more systematic evaluation can help to understand whether Nathan is effective in areas such as improving knowledge, overcoming health literacy barriers, and resolving decisional conflict, especially among priority populations who are most likely to be affected by prostate cancer and least likely to be screened. Further, as some experts consider the digital divide to be the newest social determinant of health, it is important to explore how, where, and for which populations there may be disparities in accessing and using Nathan.

Broadly, the purpose of this information collection is to: (1) assess whether Nathan is more effective at helping men make decisions about prostate cancer screening than an established decision aid or standard educational materials; (2) determine if changes or improvements to Nathan are warranted; and (3) identify ways to incorporate Nathan into primary care. We will select four primary care clinics to participate in this study. The RCT includes a three-group parallel design with one treatment arm and two control arms to test the effectiveness of Nathan for men aged 55–69. We will recruit 900 men aged 55–69 who have an upcoming general health exam at one of the four primary care clinics and randomize them to one of three arms: (1) Nathan (Intervention = 300 men); (2) the Massachusetts Department of Public Health's (MDPH's) Patient Decision Aid, Get the Latest Facts about Screening for Prostate Cancer (Control 1 = 300 men); and (3) standard educational materials from the National Cancer Institute (NCI), Prostate Cancer Screening (PDQ®)—Patient Version (Control 2 = 300 men).

Eight information collection forms will be implemented to answer our evaluation questions. These include a provider survey; a patient eligibility screener; patient pre-exposure, post-exposure, and post-clinic visit surveys; a patient usability survey; patient user experience interviews; and clinic coordinator interviews. Each instrument will be administered once per respondent throughout the course of the study. The provider survey and clinic coordinator interviews will be conducted in English only. All other information collections will be conducted in English or Spanish. The total response burden is estimated to be 1,129 hours. There are no costs to respondents other than their time to participate in data collection activities.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Primary care providers	Provider survey	40	1	10/60	7
Men ages 55–69	Patient eligibility screener	900	1	8/60	120
Men ages 55–69	Pre-exposure survey	900	1	20/60	300
Men ages 55–69	Post-exposure survey	900	1	20/60	300
Men ages 55–69	Post-clinic survey	300	1	18/60	90
Men ages 55–69	Usability survey	30	1	20/60	10
Men ages 55–69	User experience interview	900	1	20/60	300
Clinic coordinators	Clinic coordinator interview	4	1	30/60	2
Total					1,129

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–01550 Filed 1–25–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10887]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by March 26, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10887 The Medicare Advantage and Prescription Drug Programs: Part C and Part D Medicare Advantage Prescription Drug (MARx) System Updates for the Medicare Prescription Payment Plan Program

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* The Medicare Advantage and Prescription Drug Programs: Part C and Part D Medicare Advantage Prescription Drug (MARx) System Updates for the Medicare Prescription Payment Plan Program; *Use:* The IRA amended the Act by adding section 1860D–2(b)(2)(E) which, beginning January 1, 2025, establishes the Medicare Prescription Payment Plan program (hereinafter referred to as the ''program''). Under this program, MA Organizations offering Part D coverage and Part D sponsors (collectively ''Part D plans'' or ''Plans'') are required to offer enrollees the option to pay their Part D cost sharing in monthly amounts spread out over the plan year based on the formulae described in section 1860D–2(b)(2)(E)(iv) of the Act.

To effectively monitor the program, Part D plans will be required to report data elements related to the program at the beneficiary, contract, and Plan Benefit Package (PBP)1 levels beginning in Contract Year (CY) 2025. In this information collection package, CMS addresses the proposal to require Part D plans to submit beneficiary-level data elements into the MARx system via a program-specific transaction (separate from the enrollment file). In accordance with the Plan Communication User Guide (PCUG), plans may submit multiple transaction files during any CMS business day, Monday through Friday. Plan transactions are processed as received; there is no minimum or maximum limit to the number of files that Plans may submit in a day. In general, transaction and processing occur throughout the Current Calendar Month (CCM). For CY 2025, CMS will not require independent data validation for this new MARx reporting requirement. *Form Number:* CMS–10887 (OMB control number: 0938-New); *Frequency:* Monthly; *Affected Public:* Private, Federal Government, Business or other for profits, Not-for-profits institutions; *Number of Respondents:* 856; *Total Annual Responses:* 3,200,856; *Total Annual Hours:* 59,958. (For policy questions regarding this collection contact Michael Brown at (872) 287–1370 or *michael.brown3@cms.hhs.gov.*)

Dated: January 23, 2024.

William N. Parham, III

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–01582 Filed 1–25–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3768]

Best Practices for Food and Drug Administration Staff in the Postmarketing Safety Surveillance of Human Drug and Biological Products; Final Document; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final document entitled ''Best Practices for FDA Staff in the Postmarketing Safety Surveillance of Human Drug and Biological Products.'' The 21st Century Cures Act (Cures Act), enacted on December 13, 2016, requires that FDA make publicly available on its internet website best practices for certain postmarketing drug safety surveillance activities. This final document sets forth risk-based principles for FDA's conduct of ongoing postmarketing safety surveillance for human drug products and human biological products, in part, to address the Cures Act requirements. This document finalizes the draft document entitled ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff'' that was issued on November 7, 2019.

DATES: The announcement of the final document is published in the **Federal Register** on January 26, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–3768 for ''Best Practices for FDA Staff in the Postmarketing Safety Surveillance of Human Drug and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this document to the Division of Drug Information, Center for Drug

Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the document.

FOR FURTHER INFORMATION CONTACT: Sara Camilli, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3486, Silver Spring, MD 20993–0002, 301–796–4203, *Sara.Camilli@fda.hhs.gov;* or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final document entitled ''Best Practices for FDA Staff in the Postmarketing Safety Surveillance of Human Drug and Biological Products.''

Title IX, section 915 of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–85) added section 505(r) to the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(r)), requiring FDA to prepare a summary analysis of the adverse drug reaction reports received for a drug by 18 months after approval or after use of the drug by 10,000 individuals, whichever is later. The analysis includes identification of any new risks not previously identified, potential new risks, or known risks reported in unusual number.

Section 3075 of the Cures Act (Pub. L. 114–255) amended section 505(r)(2)(D) of the FD&C Act to eliminate the requirement for summary analyses for drugs as required by FDAAA. In place of the summary analyses, section 3075 amended section 505(r)(2)(D) of the FD&C Act to include the requirement that FDA make publicly available on its internet website best practices for drug safety surveillance activities for drugs approved under section 505 of the FD&C Act or section 351 of the Public Health Service Act (PHS Act).

Section 3075 of the Cures Act also amended section 505(k)(5) of the FD&C Act to strike ''bi-weekly screening,'' in subparagraph (A), and insert ''screenings''; it also added the requirement that FDA make publicly available on its internet website guidelines, developed with input from experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, that detail best practices for drug safety surveillance using the Adverse Event Reporting System.

The final document entitled ''Best Practices for FDA Staff in the Postmarketing Safety Surveillance of Human Drugs and Biological Products'' sets forth risk-based principles for FDA's conduct of ongoing postmarketing safety surveillance for human drug products and human biological products to address the Cures Act requirements. Although section 3075 of the Cures Act only references drugs approved under section 505 of the FD&C Act or section 351 of the PHS Act, the document additionally discusses other products, including nonprescription drug products, compounded drug products, and homeopathic products. The document also includes a high-level overview of other drug safety surveillance data sources, tools, methods, and activities that extend beyond use of FDA's adverse event reporting systems, as well as regulatory and other actions that can be taken in response to identified safety signals. These additional topics are included to provide context and a general overview of FDA's safety surveillance process.

This document finalizes the draft document entitled ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff,'' issued on November 7, 2019 (84 FR 60094). FDA considered comments received on the draft document as the document was finalized. Changes from the draft to the final document include: (1) document title revised to emphasize this document's focus on postmarketing safety surveillance and to clarify that this document only refers to human drug and biological products that are regulated by FDA, as this document does not refer to animal drugs regulated by FDA; (2) additional content to distinguish between the use of the terms *adverse event* and *adverse reaction;* (3) clarification of products that generally are subject to more extensive monitoring and types of safety information for focus; (4) addition of a description of the FDA Adverse Event Reporting System Public Dashboard; (5) revisions to the content on medication errors, for clarity; (6) revisions to the section on the pregnant population to align with the most recently issued documents pertaining to clinical trials and postapproval pregnancy safety studies; (7) inclusion of citations referencing the Sentinel System; (8) revisions to the description of the process for signal evaluation and documentation, including addition of a reference to the Center for Drug Evaluation and Research's ''Manual of Policies and Procedures for Collaborative Identification, Evaluation, and Resolution of a Newly Identified Safety Signal''; (9) inclusion of an expanded discussion of product labeling changes; and (10) additional content regarding Drug Safety Communications. Editorial changes were made to improve clarity.

II. Electronic Access

Persons with access to the internet may obtain the document at *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/cder-office-surveillance-and-epidemiology* or *https://www.regulations.gov.*

Dated: January 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01584 Filed 1–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–2853]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle

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 February 26, 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 0910–0623. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing Material From Cattle—21 CFR 189.5 and 700.27

OMB Control No. 0910–0623—Extension

This information collection supports FDA regulations in §§ 189.5 and 700.27 (21 CFR 189.5 and 700.27) that set forth bovine spongiform encephalopathy (BSE)-related restrictions applicable to FDA-regulated human food and cosmetics. The regulations designate certain materials from cattle as ''prohibited cattle materials,'' including specified risk materials (SRMs), the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from nonambulatory disabled cattle, and mechanically separated (MS) beef. Sections 189.5(c) and 700.27(c) set forth the requirements for recordkeeping and records access for FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived from cattle. FDA issued these recordkeeping regulations under the adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 601(c), and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 361(c), and 371(a)). Under section 701(a) of the FD&C Act, we are authorized to issue regulations for the FD&C Act's efficient enforcement. With regard to records concerning imported human food and cosmetics, FDA relied on our authority under sections 701(b) and 801(a) of the FD&C Act (21 U.S.C. 371(b) and 381(a)). Section 801(a) of the FD&C Act provides requirements with regard to imported human food and cosmetics and provides for refusal of admission of human food and cosmetics that appear to be adulterated into the United States. Section 701(b) of the FD&C Act authorizes the Secretaries of Treasury and Health and Human Services to jointly prescribe regulations for the efficient enforcement of section 801 of the FD&C Act.

These requirements are necessary because once materials are separated from an animal it may not be possible, without records, to know the following: (1) whether cattle material may contain SRMs (brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia from animals 30 months and older and tonsils and distal ileum of the small intestine from all animals of all ages); (2) whether the source animal for cattle material was inspected and passed; (3) whether the source animal for cattle material was nonambulatory disabled, or MS beef; and (4) whether tallow in human food or cosmetics contain less than 0.15 percent insoluble impurities.

FDA's regulations in §§ 189.5(c) and 700.27(c) require manufacturers and processors of human food and cosmetics manufactured from, processed with, or otherwise containing material from cattle establish and maintain records sufficient to demonstrate that the human food or cosmetics are not manufactured from, processed with, or otherwise contain prohibited cattle materials. These records must be retained for 2 years at the manufacturing or processing establishment or at a reasonably accessible location. Maintenance of electronic records is acceptable, and electronic records are considered to be reasonably accessible if they are accessible from an onsite location. Records required by these sections and existing records relevant to compliance with these sections must be available to FDA for inspection and copying. Existing records may be used if they contain all of the required information and are retained for the required time period.

Because we do not easily have access to records maintained at foreign establishments, FDA regulations in §§ 189.5(c)(6) and 700.27(c)(6), respectively, require that when filing for entry with U.S. Customs and Border Protection, the importer of record of human food or cosmetics manufactured from, processed with, or otherwise containing, cattle material must affirm that the human food or cosmetics were manufactured from, processed with, or otherwise contains, cattle material and must affirm that the human food or cosmetics were manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. In addition, if human food or cosmetics were manufactured from, processed with, or otherwise contains cattle material, the importer of record must provide within 5 business days records sufficient to demonstrate that the human food or cosmetics were not manufactured from, processed with, or otherwise contains prohibited cattle material, if requested.

Under FDA's regulations, we may designate a country from which cattle materials inspected and passed for human consumption are not considered prohibited cattle materials, and their use does not render human food or cosmetics adulterated. Sections 189.5(e) and 700.27(e) provide that a country seeking to be designated must send a written request to the Director of the Center for Food Safety and Applied Nutrition. The information the country is required to submit includes information about a country's BSE case history, risk factors, measures to prevent the introduction and transmission of BSE, and any other information relevant to determining whether SRMs, the small intestine of cattle not otherwise excluded from being a prohibited cattle material, material from nonambulatory disabled cattle, or MS beef from the country seeking designation should be considered prohibited cattle materials. We use the information to determine whether to grant a request for designation and to impose conditions if a request is granted.

Sections 189.5 and 700.27 further state that countries designated under §§ 189.5(e) and 700.27(e) will be subject to future review by FDA to determine whether their designations remain appropriate. As part of this process, we may ask designated countries to confirm their BSE situation and the information submitted by them, in support of their original application, has remained unchanged. We may revoke a country's designation if we determine that it is no longer appropriate. Therefore, designated countries may respond to periodic FDA requests by submitting information to confirm their designations remain appropriate. We use the information to ensure their designations remain appropriate.

Description of Respondents: Respondents to this information collection include manufacturers, processors, and importers of FDA-regulated human food, including dietary supplements, and cosmetics manufactured from, processed with, or otherwise containing material derived

from cattle, as well as, with regard to §§ 189.5(e) and 700.27(e), foreign governments seeking designation under those regulations.

In the **Federal Register** of August 11, 2023 (88 FR 54617), FDA published a 60-day notice requesting public comment on the proposed collection of information. We received one comment that was not related to the PRA and therefore will not be addressed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
189.5(c)(6) and 700.27(c)(6); affirmation of compliance.	54,825	1	54,825	0.033 (2 minutes)	1,809
189.5(e) and 700.27(e); request for designation.	1	1	1	80	80
189.5(e) and 700.27(e); response to request for review by FDA.	1	1	1	26	26
Total					1,915

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of respondent	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeper	Total hours
Domestic Facilities	697	52	36,244	0.25 (15 minutes)	9,061
Foreign Facilities	916	52	47,632	0.25 (15 minutes)	11,908
Total					20,969

[1] There are no capital or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: January 18, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01586 Filed 1–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–6827]

Advisory Committee; Vaccines and Related Biological Products Advisory Committee, Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the renewal of the Vaccines and Related Biological Products Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Vaccines and Related Biological Products Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the December 31, 2025, expiration date.

DATES: Authority for the Vaccines and Related Biological Products Advisory Committee will expire on December 31, 2025, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Sussan Paydar, Division of Scientific Advisors and Consultants, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 202–657–8533, *Sussan.Paydar@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Vaccines and Related Biological Products Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective vaccines and related biological products for human use, and as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety, effectiveness, and appropriate use of vaccines and related biological products which are intended for use in the prevention, treatment, or diagnosis of human diseases, and as required, any other products for which FDA has regulatory responsibility. The Committee also considers the quality and relevance of FDA's research program, which provides scientific support for the regulation of these products and makes appropriate recommendations to the Commissioner.

Pursuant to its charter, the Committee shall consist of a core of 15 voting members, including the Chairperson (the Chair). Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of immunology, molecular biology, rDNA, virology, bacteriology, epidemiology or biostatistics, vaccine policy, vaccine safety science, federal immunization activities, vaccine development including translational and clinical evaluation programs, hypersensitivity reactions to the vaccines, preventive medicine, infectious diseases, pediatrics, microbiology, and biochemistry. Members will be invited

to serve for overlapping terms of up to 4 years. Almost all non-Federal members of this committee serve as Special Government Employees. Ex Officio voting members, one each from the Department of Health and Human Services, the Centers for Disease Control and Prevention, and the National Institutes of Health, may be included. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one nonvoting member who is identified with industry interests. There may also be an alternate industry representative.

The Commissioner or designee shall have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members) or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

If functioning as a medical device panel, an additional nonvoting representative of consumer interests and a nonvoting representative of industry interests will be included in addition to the voting members.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/vaccines-and-related-biological-products-advisory-committee/charter-vaccines-and-related-biological-products-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: January 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01585 Filed 1–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0810]

Conducting Remote Regulatory Assessments—Questions and Answers; Revised Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability for comment of a revised draft guidance for industry entitled ''Conducting Remote Regulatory Assessments—Question and Answers.'' FDA has revised and is reissuing the draft guidance in response to public comments and recent amendments to the Federal Food, Drug, and Cosmetic Act (FD&C Act). When finalized, this guidance will describe FDA's current thinking regarding its use of remote regulatory assessments (RRAs). FDA has used RRAs to conduct oversight, mitigate risk, meet critical public health needs, and help maximize compliance of FDA-regulated products. This revised draft guidance provides answers to frequently asked questions regarding RRAs.

DATES: Submit either electronic or written comments on the draft guidance by March 26, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–D–0810 for ''Conducting Remote Regulatory Assessments; Questions and Answers; Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr., Rockville, MD 20852. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by emailing ORA at *orapolicystaffs@fda.hhs.gov.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Ben Firschein, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Silver Spring, MD 20993–0002, *Ben.Firschein@fda.hhs.gov,* 240–402–0613; or Patrick Clouser, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr., Rockville, MD 20857, *Patrick.Clouser@fda.hhs.gov,* 240–402–5276.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''Conducting Remote Regulatory Assessments—Questions and Answers.'' This draft revises the draft guidance entitled ''Conducting Remote Regulatory Assessments—Questions and Answers; Draft Guidance for Industry,'' which was announced in the **Federal Register** on July 25, 2022 (87 FR 44129) (hereafter, the ''original draft guidance''). FDA issued the original draft guidance to describe the Agency's thinking regarding its use of RRAs, to help increase the industry's understanding of voluntary and mandatory RRAs, and to facilitate FDA's process for conducting remote assessments for all types of FDA-regulated products outside of the COVID–19 public health emergency. The comment period for the original draft guidance ended on September 23, 2022.

One of the mandatory RRAs FDA discussed in the original draft guidance was the requirement that establishments engaged in manufacturing, preparing, propagating, compounding, or processing drugs produce, upon request from FDA, records or other information by in advance of or in lieu of an inspection, under section 704(a)(4) of the FD&C Act.

In the revised draft guidance we have clarified our answers to questions regarding: (1) the benefits of an RRA, and any consequences for not participating; (2) how a facility will know an RRA is being requested, and whether it is mandatory or voluntary; (3) when and how FDA may initiate an RRA; (4) how FDA may conduct RRAs in relation to FDA inspections or to activities by state and foreign regulatory partners; (5) what an establishment should expect during an RRA, including overall process and technological expectations, and how consent may be established for a voluntary RRA; (6) how FDA will seek to provide for ongoing communication between FDA and an establishment; and (7) what may occur upon the completion of an RRA.

The revised draft guidance also contains revisions to align with recent changes to section 704(a)(4) of the FD&C Act made by the Food and Drug Omnibus Reform Act of 2022 (FDORA).[1] Specifically, FDORA amended section 704(a)(4) of the FD&C Act in several ways:

1. FDORA sections 3611(b)(1)(A) and 3612(a) expanded those subject to mandatory requests for records or other information under section 704(a)(4) of the FD&C Act to include: (a) establishments that engage in the manufacture, preparation, propagation, compounding, or processing of a device, and (b) sites or facilities that are subject to inspection under section 704(a)(5)(C) (*i.e.,* bioresearch monitoring inspections) (21 U.S.C. 374(a)(5)).

2. FDORA section 3611(b)(1)(B) added a requirement that FDA provide a rationale for requesting records or other information under section 704(a)(4) of the FD&C Act.

3. FDORA section 3613(b) inserted new section 704(a)(4)(C) of the FD&C Act providing that FDA may rely on any records or other information obtained under section 704(a)(4) to satisfy requirements that may pertain to a preapproval or risk-based inspection, or to resolve deficiencies identified during such inspections, if applicable and appropriate.

4. FDORA required FDA to issue or update guidance describing the circumstances under which the Agency intends to use its authority to issue requests for records or other information under section 704(a)(4) of the FD&C Act (as amended by FDORA), the processes for firms to respond, and the factors for determining whether a facility has appropriately and timely responded (FDORA section 3611(b)(2)).

FDA seeks public comment on the revised draft guidance. We are particularly interested in receiving comments that relate to revisions the Agency is proposing to address the above FDORA requirements.

This revised draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Conducting Remote Regulatory Assessments.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this revised draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the revised draft guidance at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs,* or *https://www.regulations.gov.*

[1] On December 29, 2022, the President signed into law FDORA, which was enacted as part of the Consolidated Appropriations Act, 2023, Public Law 117–328 (2022).

Dated: January 23, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–01589 Filed 1–25–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meetings of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB). The meeting will be streamed live on *hhs.gov/live.* A pre-registered public comment session will be held during the virtual meeting. Pre-registration is required for members of the public who wish to present their comments live during the meeting. Individuals who wish to send in their written public comment should send an email to *CARB@hhs.gov.* Registration information is available on the website *http://www.hhs.gov/paccarb* and must be completed by February 15, 2024, for the February 22, 2024, Public Meeting. Additional information about registering for the meeting and providing public comment can be obtained at *http://www.hhs.gov/paccarb* on the Upcoming Meetings page.

DATES: The meeting is scheduled to be held on February 22, 2024, from 9 a.m. to 4 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the website for the PACCARB at *http://www.hhs.gov/paccarb* when this information becomes available. Pre-registration for attending the meeting is strongly suggested and should be completed no later than February 15, 2024.

ADDRESSES: The virtual meeting can be accessed through a live webcast on the day of the meeting. Additional instructions regarding attending this meeting virtually will be posted at least one week prior to the meeting at: *http://www.hhs.gov/paccarb.*

FOR FURTHER INFORMATION CONTACT: Jomana Musmar, M.S., Ph.D., Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, 1101 Wootton Parkway, Rockville, MD 20852. Phone: 202–746–1512; Email: *CARB@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (PACCARB), established by Executive Order 13676, is continued by section 505 of Public Law 116–22, the Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019 (PAHPAIA). Activities and duties of the PACCARB are governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of Federal advisory committees.

The PACCARB shall advise and provide information and recommendations to the Secretary of Health and Human Services (Secretary) regarding programs and policies intended to reduce or combat antibiotic-resistant bacteria that may present a public health threat and improve capabilities to prevent, diagnose, mitigate, or treat such resistance. The PACCARB shall function solely for advisory purposes.

Such advice, information, and recommendations may be related to improving: the effectiveness of antibiotics; research and advanced research on, and the development of, improved and innovative methods for combating or reducing antibiotic resistance, including new treatments, rapid point-of-care diagnostics, alternatives to antibiotics, including alternatives to animal antibiotics, and antimicrobial stewardship activities; surveillance of antibiotic-resistant bacterial infections, including publicly available and up-to-date information on resistance to antibiotics; education for health care providers and the public with respect to up-to-date information on antibiotic resistance and ways to reduce or combat such resistance to antibiotics related to humans and animals; methods to prevent or reduce the transmission of antibiotic-resistant bacterial infections; including stewardship programs; and coordination with respect to international efforts in order to inform and advance the United States capabilities to combat antibiotic resistance.

The February 22, 2024, meeting will serve as a critical platform for key international stakeholders, and non-government organizations, to share their latest strategies and progress in tackling the global threat of antimicrobial resistance. The focus will be on both showcasing successful international and regional initiatives and identifying areas for enhanced collaboration and knowledge exchange. The meeting agenda will be posted on the PACCARB website at *http://www.hhs.gov/paccarb* when it has been finalized. All agenda items are tentative and subject to change. Instructions regarding attending the meeting virtually will be posted at least one week prior to the meeting at: *http://www.hhs.gov/paccarb.*

Members of the public will have the opportunity to provide comments virtually during the February meeting by pre-registering online at *http://www.hhs.gov/paccarb;* pre-registration is required for participation in this session with limited spots available. Written public comments can also be emailed to *CARB@hhs.gov* by midnight February 15, 2024, and should be limited to no more than one page. All public comments received prior to February 15, 2024, will be provided to the PACCARB members.

Dated: January 10, 2024.

Jomana F. Musmar,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health.

[FR Doc. 2024–01545 Filed 1–25–24; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications 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; Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: February 21, 2024.

Time: 10:00 a.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: Vandana Kumari, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–3290, *vandana.kumari@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative R01—Clinical Studies of Mental Illness.

Date: February 21, 2024.

Time: 11:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW Washington, DC 20015.

Contact Person: Allison Kurti, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007J, Bethesda, MD 20892, (301) 594–1814, *kurtian@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Cancer Prevention Study Section.

Date: February 22–23, 2024.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Byung Min Chung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4056, *justin.chung@nih.gov*.

Name of Committee: Biology of Development and Aging Integrated Review Group; Advancing Therapeutics A Study Section.

Date: February 22–23, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue NW, Washington, DC 20037,

Contact Person: Maureen Shuh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4097, *maureen.shuh@nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section

Date: February 22–23, 2024.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aleksey G Kazantsev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20817, 301–435–1042, *aleksey.kazantsev@nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function B Study Section.

Date: February 22–23, 2024.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, Bethesda One, Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Alexei A Yeliseev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 443–0552, *yeliseeva@mail.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Adult Psychopathology and Disorders of Aging Study Section.

Date: February 22–23, 2024.

Time: 9:00 a.m. to 8:00 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: Benjamin G Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402–4786, *shaperobg@mail.nih.gov*.

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis, Thrombosis, Blood Cells and Transfusion Study Section.

Date: February 22–23, 2024.

Time: 9:00 a.m. to 9:00 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: Vivian Tang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–6208 *tangvw@csr.nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section

Date: February 22–23, 2024.

Time: 9:00 a.m. to 8:00 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: Xinrui Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2084, *xinrui.li@nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics Study Section.

Date: February 22–23, 2024.

Time: 9:00 a.m. to 8:00 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: Altaf Ahmad Dar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–2680, *altaf.dar@nih.gov*.

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Social Psychology, Personality and Interpersonal Processes Study Section

Date: February 22–23, 2024.

Time: 9:30 a.m. to 8:00 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: Shahrzad Mavandadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4792, *shahrzad.mavandadi@nih.gov*.

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; Immunity and Host Defense Study Section.

Date: February 22–23, 2024.

Time: 9:30 a.m. to 7:00 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: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *mulkya@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Clinical Studies of Mental Illness.

Date: February 22, 2024.

Time: 3:00 p.m. to 8:00 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: Benjamin G Shapero, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 402–4786, *shaperobg@mail.nih.gov*.

Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 23, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01574 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel; Animal Models for Hepatitis B and C (R01 Clinical Trial Not Allowed).

Date: February 29, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, RML 31/3118A, Hamilton, MT 59840 (Video Assisted Meeting).

Contact Person: Dylan P. Flather, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 903 South 4th Street, RML 31/3118A, Hamilton, MT 59840, (406) 802–6209, *dylan.flather@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01572 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2024–1 Phase I: Rapid Diagnostic Assays for Self-Monitoring of Acute or Rebound HIV–1 Infection (Topic 126)

Date: February 22, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Lee G. Klinkenberg, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20852 301–761–7749, *lee.klinkenberg@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01575 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–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, February 08, 2024, 10:00 a.m. to February 08, 2024, 07:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, which was published in the **Federal Register** on January 19, 2024, FR Doc. No. 2024–00948, 89 FR 3675.

This meeting is being amended to change the SRO Contact from Dr. Velasco Cimica, Ph.D., to Dr. Marcus Ferrone, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. The meeting is closed to the public.

Dated: January 23, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01592 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2024–1 Phase I: Development of novel In-vitro and In-vivo Models to support NeuroHIV Research (Topic 002).

Date: February 27, 2024.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Barry J. Margulies, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G11, Rockville, MD 20852, (301) 761–7956, *barry.margulies@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01566 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; NST–3 Member SEP.

Date: February 5, 2024.

Time: 5:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: New Orleans Marriott, 555 Canal St., New Orleans, LA.

Contact Person: Lataisia Cherie Jones, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–496–9223, *lataisia.jones@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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: January 23, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01588 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2024–1 Phase I: Software or Web Services to Automate Metadata Enrichment and Standardization for Data on Infectious and Immune—Mediated Diseases (Topic 135).

Date: February 21, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21A, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G21A, Rockville, MD 20892, *shiv.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01564 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group; Genome Research Study Section.

Date: March 7, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge, Drive Bethesda, MD 20817.

Contact Person: Lori Bonnycastle, Ph.D., Scientific Review Officer, 50 South Drive, National Human Genome Research Institute, National Institute of Health, Building 50, Room 5314, Bethesda, MD 20892, 301–594–9206, *lbonnyca@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 22, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01522 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group; Medication Development Research Study Section.

Date: March 13, 2024.
Time: 9:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.
Contact Person: Preethy Nayar, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, 301–443–4577, *nayarp2@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 22, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01568 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications 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 Human Genome Research Institute Special Emphasis Panel; Center for ELSI Resource and Analysis (CERA).
Date: March 13, 2024.
Time: 2:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.
Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402–8739, *pozzattr@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Data Integration and Statistical Analysis Methods (DISAM).
Date: March 15, 2024.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.
Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute for Human Genome Research, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Advancing Genomic Medicine Research (AGMR).
Date: March 18, 2024.
Time: 11:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.
Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute for Human Genome Research, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomics & Health Equity.
Date: March 22, 2024.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.
Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402–0838, *pozzattr@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Diversity Action Plan (DAP).
Date: March 26, 2024.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.
Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute for Human Genome Research, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic and Data Science Education.
Date: March 28, 2024.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.
Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 717–2348, *mckenneyk@mail.nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Network of Genomics Enabled Learning Health Systems.
Date: March 29, 2024.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.
Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute for Human Genome Research, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 402–8823, *wheelansj@nih.gov*.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Pangenome Informatics Tools.
Date: April 5, 2024.
Time: 12:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.
Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, MSC 6908, Bethesda, MD 20892, (301) 717–2348, *mckenneyk@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 22, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01523 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–SBIR PHS 2024–1 Phase I/II: Development of Next-Gen Devices and Materials-Based Platforms for the Admin of HIV–1 bNAbs (Topic 124); PHS 2020–1 Phase II: Particle-based Co-delivery of HIV immunogens as Next-Gen vaccines (Topic 77).

Date: February 22, 2024.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Poonam Pegu, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33, Rockville, MD 20852, 240–292–0719, *poonam.pegu@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01571 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Frederick National Laboratory Advisory Committee to the National Cancer Institute, February 29, 2024, 1:00 p.m. to February 29, 2024, 4:00 p.m., National Cancer Institute—Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 which was published in the **Federal Register** on November 7, 2023, FR Doc 2023–24584, 88 FR 76837.

This meeting notice is being amended to change the meeting date from February 29, 2024 to March 11, 2024. The meeting format, agenda and time will stay the same. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/*. The meeting is open to the public.

Dated: January 23, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01594 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious 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 Allergy and Infectious Diseases Special Emphasis Panel; Immune Mechanisms at the Maternal-Fetal Interface (R01 Clinical Trial Not Allowed).

Date: February 28–29, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G54, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Hitendra S. Chand, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G54, Rockville, MD 20852, (240) 627–3245, *hiten.chand@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–01570 Filed 1–25–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0136]

Agency Information Collection Activities; Extension; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection (CBP) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than March 26, 2024) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0136 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the

public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Number: 1651–0136.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with a change in burden hours.

Type of Review: Extension (with change).

Affected Public: Individuals and Businesses.

Abstract: Executive Order 12862, Setting Customer Service Standards, directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, reiterates that Federal agencies should continually improve their understanding of their customers and their customer experience challenges. In order to work continuously to ensure that our programs are effective and meet our customers' needs, CBP seeks to obtain OMB approval of a generic clearance to collect qualitative feedback on our 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 collection of information is necessary to enable CBP to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with CBP's programs. 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 CBP and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Type of Information Collection: Customer Feedback.

Estimated Number of Respondents: 620,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 620,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 51,000.

Dated: January 23, 2024.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–01576 Filed 1–25–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2023–0029; OMB No. 1660–0016]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Revision to National Flood Insurance Program Maps: Application Forms and Instructions for LOMRs and CLOMRs

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of extension and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. FEMA invites the general public to take this opportunity to comment on an extension of a currently approved information collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, this notice seeks comments concerning information required by FEMA to revise National Flood Insurance Program Maps.

DATES: Comments must be submitted on or before February 26, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address *FEMA-Information-Collections-Management@fema.dhs.gov* or Brian Koper, Emergency Management Specialist, Engineering Services Branch, Risk Management Directorate, DHS/FEMA, at *Brian.Koper@fema.dhs.gov* or 202–733–7859.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.* The Federal Emergency Management Agency (FEMA) administers the NFIP and maintains the maps that depict flood hazard information. Communities are required to submit technical information concerning flood hazards and plans to avoid potential flood hazards when physical changes occur (*see* 44 CFR 65.3). Communities are provided the right to submit technical information when inconsistencies on maps are identified (*see* 44 CFR 65.4). In order to revise the Base (one-percent annual chance) Flood Elevations (BFEs), Special Flood Hazard Areas (SFHAs), and floodways presented on the NFIP maps, a community must submit scientific or technical data demonstrating the need for a revision. The NFIP regulations outline the data that must be submitted for these requests (*see* 44 CFR part 65). This collection serves to provide a standard format for the general information

requirements outlined in the NFIP regulations and helps establish an organized package of the data needed to revise NFIP maps.

This proposed information collection previously published in the **Federal Register** on October 26, 2023, at 88 FR 73604 with a 60-day public comment period. One public comment voicing their support for this information collection was received. FEMA wishes to thank the commentor for their support. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Revision to National Flood Insurance Program Maps: Application Forms for LOMRs and CLOMRs.

Type of Information Collection: Extension of a currently approved information collection.

OMB Number: 1660–0016.

FEMA Forms: FEMA Form FF–206–FY–21–100 (formerly 086–0–27), Overview & Concurrence (Form 1); FEMA Form FF–206–FY–21–101 (formerly 086–0–27A), Riverine Hydrology & Hydraulics (Form 2); FEMA Form FF–206–FY–21–102 (formerly 086–0–27B), Riverine Structures (Form 3); FEMA Form FF–206–FY–21–103 (formerly 086–0–27C), Coastal Analysis (Form 4); FEMA Form FF–206–FY–21–104 (formerly 086–0–27D), Coastal Structures (Form 5); and FEMA Form FF–206–FY–21–105 (formerly 086–0–27E), Alluvial Fan Flooding (Form 6).

Abstract: The forms in this information collection are used to determine if the collected data will result in the modification of Base Flood Elevations (BFEs), Special Flood Hazard Area (SFHA), or floodway. Once the information is collected, it is submitted to FEMA for review and is subsequently included on the National Flood Insurance Program (NFIP) maps. These maps will be used for flood insurance determinations and for floodplain management purposes.

Affected Public: State, Local and Tribal Government, Business or Other For-Profit, Individuals or Households.

Estimated Number of Respondents: 5,589.

Estimated Number of Responses: 5,589.

Estimated Total Annual Burden Hours: 14,633.

Estimated Total Annual Respondent Cost: $1,082,824.

Estimated Respondents' Operation and Maintenance Costs: $26,430,000.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $26,651.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the Agency, including whether the information shall have practical utility; evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2024–01583 Filed 1–25–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0029]

National Security Telecommunications Advisory Committee

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of open Federal advisory committee meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the President's National Security Telecommunications Advisory Committee (NSTAC) meeting on March 7, 2024. This meeting is open to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Standard Time (EST) on February 29, 2024. For more information on how to participate, please contact *NSTAC@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. EST on February 29, 2024.

Written Comments: Written comments must be received no later than 5:00 p.m. EST on February 29, 2024.

Meeting Date: The NSTAC will meet on March 7, 2024, from 2:00 to 3:00 p.m. EST. The meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference call bridge, or to request special assistance, please email *NSTAC@cisa.dhs.gov* by 5:00 p.m. EST on February 29, 2024. The NSTAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

Comments: Members of the public are invited to provide comments on issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/nstac* prior to the day of the meeting. Comments should be submitted by 5:00 p.m. EST on February 29, 2024, and must be identified by Docket Number CISA–2023–0029. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@cisa.dhs.gov.* Include the Docket Number CISA–2023–0029 in the subject line of the email.

Instructions: All submissions received must include the words ''Cybersecurity and Infrastructure Security Agency'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided. You may wish to review the Privacy & Security Notice available via a link on the homepage of *www.regulations.gov.*

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2023–0029.

A public comment period is scheduled to be held during the meeting from 2:10 to 2:20 p.m. EST. Speakers who wish to participate in the public comment period must email *NSTAC@cisa.dhs.gov* to register. Speakers should limit their comments to three minutes

and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Christina Berger, 202–701–6354, *NSTAC@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC is established under the authority of Executive Order (E.O.) 12382, dated September 13, 1982, as amended by E.O. 13286 and 14048, continued under the authority of E.O. 14109, dated September 29, 2023. Notice of this meeting is given under FACA, 5 U.S.C. ch. 10 (Pub. L. 117–286). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will hold a conference call on Thursday, March 7, 2024, from 2:00 to 3:00 p.m. EST to discuss current NSTAC activities and the government's ongoing cybersecurity and NS/EP communications initiatives. This meeting is open to the public and will include: (1) remarks from the administration and CISA leadership on salient NS/EP and cybersecurity efforts; (2) a deliberation and vote on the *NSTAC Report to the President on Measuring and Incentivizing the Adoption of Cybersecurity Best Practices;* (3) a deliberation and vote on the *NSTAC Letter to the President on Dynamic Spectrum Sharing;* and (4) a status update on the Principles for Baseline Security Offerings from Cloud Service Providers Study.

Dated: January 22, 2024.

Christina Berger,

Designated Federal Officer, National Security Telecommunications Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2024–01504 Filed 1–25–24; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Secret Service

[DHS–2024–0002]

U.S. Secret Service ''Cyber Investigations Advisory Board''

AGENCY: United States Secret Service (USSS), Department of Homeland Security, (DHS).

ACTION: Public announcement for the reestablishment of a Federal advisory committee.

SUMMARY: The United States Secret Service (USSS) has reestablished a ''Cyber Investigations Advisory Board (CIAB),'' a Federal Advisory Committee, in order to ''prevent and disrupt criminal use of cyberspace,'' as directed in the 2018 Department of Homeland Security Cybersecurity Strategy (Pillar #3, Goal #4) and as identified by the Secretary of Homeland Security in 2021. This notice is not a solicitation for membership. The goal of CIAB is to provide the USSS with insights from industry, the public sector, academia, and non-profit organizations on emerging cybersecurity and cybercrime issues, and to provide outside strategic direction for the USSS investigative mission. The CIAB will serve a principal mechanism through which senior industry and other experts can engage, collaborate, and advise the USSS regarding cybersecurity and cybercrime issues.

SUPPLEMENTARY INFORMATION:

Background on the U.S. Secret Service's Investigative Mission: The U.S. Secret Service has been investigating and preventing financial crimes since its creation in 1865. Today, the agency's investigative mission has evolved to include safeguarding the payment and financial systems of the United States from a wide range of financial and computer-enabled frauds.

The Office of Investigations is the largest directorate within the U.S. Secret Service, supporting protective responsibilities world-wide and executing the founding mission of the Secret Service—to safeguard the integrity of U.S. financial and payment systems. The Office of Investigations accomplishes this mission through strategic objectives that include: (1) Focusing on countering the most significant criminal threats to the financial and payment systems of the United States through criminal investigations; (2) Supporting protective responsibilities through investigation of threats and safeguarding persons, locations and events; (3) Growing and developing the Secret Service workforce through strategic hiring and training.

FACA Exemption: Due to the law enforcement sensitive nature of the discussions that will take place during committee meetings, the CIAB is exempted by the Secretary of Homeland Security from the public notice, reporting, and open meeting requirements of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. ch.10), pursuant to the Homeland Security Act of 2002, 871(a)[(6 U.S.C. 451(a))].

DATES: The CIAB will hold meetings twice annually at U.S. Secret Service Headquarters in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Emma Wormser, CIAB Designated Federal Officer, *emma.wormser@usss.dhs.gov.*

Michael J. Miron,

Committee Management Officer, Department of Homeland Security.

[FR Doc. 2024–01565 Filed 1–25–24; 8:45 am]

BILLING CODE 9110–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–05]

30-Day Notice of Proposed Information Collection: Project Approval for Single-Family Condominiums; OMB Control No.: 2502–0610

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* February 26, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email;

Colette.Pollard@hud.gov, telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on October 10, 2023 at 88 FR 69953.

A. Overview of Information Collection

Title of Information Collection: Project Approval for Single-Family Condominiums.

OMB Approval Number: 2502–0610.

Type of Request: Revision of currently approved collection.

Form Number: HUD–9991A–LL, FHA Condominium Loan Level Certification; HUD–9991B–SUA, FHA Condominium Single-Unit Approval Questionnaire & Certification; HUD–9992, FHA Condominium Project Approval Questionnaire; HUD–92544, Warranty of Completion of Construction; HUD–92541, Builder's Certification of Plans, Specifications, and Site; HUD–96029, Condominium Rider.

Description of the need for the information and proposed use: This collection package seeks to renew and revise collection forms, HUD–9992 FHA Condominium Project Approval Questionnaire, to process condominium project approval applications, HUD–9991A–LL, FHA Condominium Loan Level Certification to process loan level approvals and the HUD–9991B–SUA, FHA Single-Unit Approval Questionnaire & Certification to process single-unit approvals. These forms are needed to determine if a condominium project is eligible for FHA project approval and if a unit in an approved or unapproved condominium project is eligible for FHA-insured financing. The existing HUD–9992, FHA Condominium Project Approval Questionnaire and the HUD–9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire have been revised to make the questionnaires more adaptable to future policy changes and to provide clarity without increasing the public burden. HUD is seeking feedback for sections of the HUD–9992 pertaining to Financial Stability and Controls that relate to Special Assessments, Deferred Maintenance, and independent sustainability of a completed phase under Legal Phasing. The HUD–92544, Warranty of Completion of Construction and HUD–96029, Condominium Rider were updated to comply with the Privacy Act Notice requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 122,155.

Estimated Number of Responses: 122,155.

Frequency of Response: One-time for each condominium project approval or recertification, and one-time for each loan level approval and Single-Unit Approval.

Average Hours per Response: .49 hours (varies by form and approval type: project, loan level approval and Single-Unit approval).

TOTAL ESTIMATED BURDENS

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
OMB 2502–0610	122,155	Once per loan	122,155	0.49	59,985	59.77	3,585,223.95

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; (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; 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.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–01539 Filed 1–25–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–MB–2024–0006; FXMB123109CITY0–245–FF09M20200; OMB Control Number 1018–0183]

Agency Information Collection Activities; Urban Bird Treaty Program Requirements

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew a currently approved information collection without change.

DATES: Interested persons are invited to submit comments on or before March 26, 2024.

ADDRESSES: Send your comments on the information collection request (ICR) by

one of the following methods (reference ''1018–0183'' in the subject line of your comment):

- *Internet (preferred): https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R7–ES–2024–0003.
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Urban Bird Treaty Program (UBT Program) is administered through the Service's Migratory Bird Program, under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e). The UBT Program supports partnerships of public and private organizations and individuals working to conserve migratory birds and their habitats in urban areas for the benefit of these species and the people that live in urban areas. The UBT partners' habitat conservation activities help to ensure that more natural areas, including forests, grasslands, wetlands, and meadows, are available in urban areas, so that historically excluded and underserved communities can have improved access to green space and opportunities to engage in habitat restoration and community science as well as bird-related recreation and educational programs. These habitat restoration activities, especially urban forest conservation, also contribute to climate resiliency by reducing the amount of carbon dioxide in the atmosphere. Lights-out programs in UBT cities help reduce energy costs and greenhouse gas emissions by reducing the use of electricity when people and businesses turn off their lights between dusk and dawn during the fall and spring periods of bird migration in order to reduce bird collisions with building glass.

The Service designates UBT cities or municipalities through a process in which applicants submit a nomination package, including a letter of intention and an implementation plan, for approval by the Service's Migratory Bird Program. Within 3 months, the Service reviews the package, makes any necessary recommendations for changes, and then decides to either approve or reject the package. If rejected, the city can reapply the following year. In most cases, when the Service designates a new city partner, the Service and the new city partner hold a signing ceremony, during which a representative from both the Service and the city sign a nonbinding document that states the importance of conserving birds and their habitats to the health and well-being of people that live in and visit the city. To maintain this city partner designation, the city must submit information on the activities it has carried out to meet the goals of the UBT Program, including those related to bird habitat conservation, bird hazard reduction, and bird-related community education and engagement. By helping make cities healthier places for birds and people, the UBT Program contributes to the Administration's priorities of justice and racial equity, climate resiliency, and the President's Executive Order 14008 to protect 30 percent of the Nation's land and 30 percent of its ocean areas by 2030.

The UBT program benefits city partners in many ways, including:

- Helps city partners achieve their goals for making cities healthier places for birds and people.
- Provides opportunities to share and learn from other city partners' tools, tactics, successes, and challenges, to advance city partners' urban bird conservation efforts.
- Strengthens the cohesion and effectiveness of the partnerships by coming together and working under the banner of the UBT Program.
- Gives city partners improved access to funding through the National Fish and Wildlife Foundation's Five Star and Urban Waters Restoration grant program, as UBT cities receive priority in this program.
- Helps partners garner additional funds through other urban conservation grant programs that have shared goals and objectives.
- Helps partners achieve green building credits, reduced energy costs, green space requirements, environmental equity, and other sustainability goals.
- Promotes the livability and sustainability of partner cities by spreading the word about the city's UBT Federal designation and all the benefits of a green and bird-friendly city.

We collect the following information from prospective and successful applicants in conjunction with the UBT Program:

- *Nomination Letter*—A prospective applicant must submit a letter of intention from the city's partnership that details its commitment to urban bird conservation and community engagement in bird-related education, recreation, conservation, science, and

monitoring. Support and involvement by the city government is required.

• *Implementation Plan*—The required implementation plan should contain the following (see the UBT Program Guidebook at *https://www.fws.gov/sites/default/files/documents/urban-bird-reaty-v3.pdf* for full descriptions of requirements):

—Detailed description of the importance of the city to migrating, nesting, and overwintering birds and bird habitats; human population size of the city; and socioeconomic profile of the human communities present and those targeted for education and engagement programs.

—Map of the geographic area that is being nominated for designation.

—List of individuals and organizations, and their contact information, that are active in the partnership.

—The mission, goals, and objectives of the partnership applying for designation, organized by the three UBT goal categories.

—Description of accomplishments (*e.g.,* activities, products, outcomes) that have been completed over the last 2–3 years, the audiences and communities reached/engaged through those activities, and the partner organizations that have achieved them, organized by UBT goal categories.

—Description of goals, objectives, activities, actions, and tools/products that are being planned for the next 3–5 years under the UBT designation, the objectives to be accomplished, the audiences and communities targeted for engagement, and the partners who will complete the work, organized by UBT goal categories.

• *Ad Hoc Reports*—The Service will also request information updates on an ongoing basis, on UBT city points of contact, activities and events, and other information about urban bird conservation in the city, as needed by the Service for storytelling, promotion, and internal programmatic communications, education, and outreach.

• *Biennial Reporting*—For each goal category, the Service requires city partners to provide biennial metrics, as well as written and photographic descriptions of activities. To maintain their city's designation by ensuring that they are actively working to achieve the goals of the UBT Program, city partners are required to submit this information.

We will use the information collected for storytelling purposes to promote the urban bird conservation work of city partners, and to enable the Migratory Bird Program to develop UBT Program accomplishment reports and other communications tools to share with the public and the conservation community at large. The reporting requirement ensures that the UBT city designation is meaningful and that city partners are accountable for the efforts that they agreed to undertake to earn their designation. Additionally, we will use the information to promote the UBT Program to other interested city partners and the benefits of urban bird conservation generally. For more information, please see the UBT Program Guidebook at the following link: *https://www.fws.gov/sites/default/files/documents/urban-bird-reaty-v3.pdf.*

The public may request copies of documents referenced in this information collection by sending a request to the Service Information Collection Clearance Officer in **ADDRESSES**, above.

Title of Collection: Urban Bird Treaty Program Requirements.

OMB Control Number: 1018–0183.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Nonprofits; colleges, universities, and schools; museums, zoos, and aquaria; local community groups; private businesses; and municipal, State, and Tribal governments involved in urban bird conservation in UBT cities.

Total Estimated Number of Annual Respondents: 39.

Total Estimated Number of Annual Responses: 39.

Estimated Completion Time per Response: Varies from 3 hours to 80 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 1,256.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One-time submission of nomination letter; one-time submission of implementation plan; on occasion for information updates; and biennial reporting.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2024–01542 Filed 1–25–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM–103686]

Public Land Order No. 7935; Extension of Public Land Order No. 7593 for Davenport Electronic Site; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order (PLO) No. 7593 for an additional 20-year period. On January 28, 2004, PLO No. 7593 withdrew 80 acres of National Forest System lands in Catron County, New Mexico, from location and entry under the United States mining laws, subject to valid existing rights, for a 20-year period. The purpose of this withdrawal is to protect the Davenport Electronic Site managed by the United States Forest Service (USFS), which supports emergency service communication infrastructure.

DATES: This PLO takes effect on January 28, 2024.

FOR FURTHER INFORMATION CONTACT: Carol Harris, BLM Socorro Field Office Realty Specialist by phone at 575–838–1298 or email at *caharris@blm.gov* or Richard Wilhelm, USFS Lands Special Uses Program Manager, by phone at (505) 346–3842 or by email at *richard.wilhelm@usda.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or Tele Braille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose of the withdrawal extended by this PLO is to protect the Davenport Electronic Site, as originally authorized under PLO No. 7593 (69 FR 4172), which is incorporated herein by reference. PLO No. 7593 withdrew 80 acres of National Forest System lands from location and entry under the United States mining laws. The withdrawal extension is necessary to continue protection of these lands that are utilized to support emergency service communication for an additional 20-year term.

Order

By virtue of the authority vested in the Secretary of the Interior by Section

204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, PLO No. 7593 (69 FR 4172), which withdrew 80 acres of National Forest System lands from location and entry under the United States mining laws to protect the USFS-managed Davenport Electronic Site, is hereby extended for an additional 20-year period and the legal description reads as follows:

New Mexico Principal Meridian, New Mexico

T. 1 N., R. 10 W.,
Sec. 29, S½NW¼.

The areas described aggregate 80 acres.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

(Authority: 43 U.S.C. 1714(f))

Robert T. Anderson,

Solicitor.

[FR Doc. 2024–01551 Filed 1–25–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037280; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology 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 Okaloosa County, FL.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 26, 2024.

ADDRESSES: Ryan J. Wheeler, Robert S. Peabody Institute of Archaeology, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.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 Robert S. Peabody Institute of Archaeology. 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 Robert S. Peabody Institute of Archaeology.

Description

Human remains representing, at minimum, one individual were removed from Okaloosa County, FL. Clarence B. Moore disturbed and removed burials from the site that he called Mound at Walton Camp, also known as Fort Walton Temple Mound (8OK6). Moore transferred the human remains, representing one adult of indeterminate age and sex, to the Robert S. Peabody Institute of Archaeology (then called the Department of Archaeology, Phillips Academy) in 1901. The 13 associated funerary objects are four lots of stone celts; one stone disk; one lot of shell ornaments; one lot of bone perforators; three lots of chipped stone points; one hematite bar; one ceramic vessel; and one lot of medium sized shell beads and 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: archeological information, geographical information, historical information, oral tradition, and the expert opinion of Tribal representatives.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Robert S. Peabody Institute of Archaeology has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 13 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 Jena Band of Choctaw Indians; 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 February 26, 2024. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology 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 Robert S. Peabody Institute of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 18, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–01538 Filed 1–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037279; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of California, Davis, Davis, 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, Davis (UC Davis) 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 Solano County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 26, 2024.

ADDRESSES: Megon Noble, NAGPRA Project Manager, University of California, Davis, 412 Mrak Hall, One Shields Avenue, Davis, CA 95616, telephone (530) 752–8501, email *mnoble@ucdavis.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 UC Davis. 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 UC Davis.

Description

Human remains representing, at minimum, two individuals were removed from Solano County, CA. In 1973, CA–SOL–271 was excavated by Helen Clough as part of a UC Davis Field School (UC Davis Accession 66). In 1999, the same site was excavated again by UC Davis Anthropology Graduate Student, Eric Wohlgemuth (UC Davis Accession 537). There are 1,330 lots of associated funerary objects. Of that number, 1,316 funerary objects have been located and 14 objects are currently missing. UC Davis continues to look for the missing associated funerary objects. The 1,316 located funerary objects are three lots consisting of worked shell (including beads and pendants); 28 lots consisting of worked bone (awls, whistles, and other worked bone); five lots consisting of stone beads; 115 lots consisting of projectile points, bifaces, and other chipped stone; 132 lots consisting of groundstone; 333 lots consisting of debitage; 162 lots consisting of worked stone; 19 lots consisting of baked clay/ceramics; 320 lots consisting of unmodified animal bone; 94 lots consisting of unmodified shell; 23 lots consisting of charcoal, ash, and ochre; five lots consisting of mixed bone, shell and seeds; 18 lots consisting of plant material (seeds, nuts, acorn caps); and 59 lots consisting of flotations, fire affected rock, soil, and unmodified stone. The 14 currently missing associated funerary objects are one lot consisting of worked shell; one lot consisting of worked bone; four projectile points; one lot consisting of debitage; one lot consisting of worked stone; three lots consisting of unmodified animal bone; one lot consisting of unmodified shell; and one lot consisting of unmodified stone; and one lot consisting of unknown material.

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, historical, linguistics, and oral tradition.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UC Davis has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 1,330 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 Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; Kletsel Dehe Wintun Nation of the Cortina Rancheria (Previously listed as Kletsel Dehe Band of Wintun Indians); and the Yocha Dehe Wintun Nation, 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 and associated funerary objects in this notice to a requestor may occur on or after February 26, 2024. If competing requests for repatriation are received, UC Davis 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. UC Davis is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 18, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–01536 Filed 1–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037282; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Central Washington University, Ellensburg, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Central Washington University 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 King County, WA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after February 26, 2024.

ADDRESSES: Lourdes Henebry-DeLeon, Department of Anthropology and Museum Studies, Central Washington University, 400 University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *Lourdes.Henebry-DeLeon@cwu.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 Central Washington University. 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 Central Washington University.

Description

In 1925, human remains representing, at minimum, one individual were removed from South Seattle in King County, WA, by J.N. Lewis and donated to the Burke Museum, University of Washington (Accn. #2098, Cat. # 19–14810). In 1974, the Burke Museum transferred the human remains and associated funerary objects to Central Washington University (Accession AS and BP). The six associated funerary objects are small pieces of red ochre.

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, biological, geographical, and historical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Central Washington University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The six 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 Muckleshoot Indian Tribe and the Suquamish Indian Tribe of the Port Madison 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 February 26, 2024. If competing requests for repatriation are received, the Central Washington University 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 Central Washington University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: January 18, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–01541 Filed 1–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–GLBA–NPS0037098; 5471 PPMRSNR1Z.NN0000 PX.DGRSM0203.00.1; OMB Control Number 1024–0281]

Agency Information Collection Activities: National Park Service Bear Sighting and Encounter Reports

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to revise a currently approved information collection.

DATES: Interested persons are invited to submit comments on or before March 26, 2024.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the NPS Information Collection Clearance Officer (ADIR–ICCO), 13461 Sunrise Valley Drive, (MS–244) Reston, VA 20171 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Office of Management and Budget (OMB) Control Number ''1024–0281'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Ryan Williamson, Wildlife Biologist, Great Smoky Mountains National Park; at *ryan_williamson@nps.gov* (email); or 865–436–1248 (telephone). Or contact Tania Lewis, Wildlife Biologist, Glacier Bay National Park & Preserve; at *tania_lewis@nps.gov* (email); or 907–697–2668 (telephone). Please reference OMB

Control Number 1024–0281 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The National Park Service Organic Act, 54 U.S.C. 100101(a) *et seq.,* requires that the NPS preserve national parks for the enjoyment, education, and inspiration of this and future generations. In order to monitor resources and bear management in areas managed by the National Park Service and to enhance the safety of future visitors, we are requesting to revise OMB Control Number: 1024–0281 to include a new system-wide form for bear sightings and encounters by visitors in National Parks.

Bear sighting data provide park managers with important information used to determine bear movements, habitat use, and species distribution. This information is important for backcountry management and planning, field research planning, and educational outreach for visitors. Bear-human interaction data is vital to understanding bear responses to people, detecting changes in bear behavior, and identifying areas of high bear-human conflict. Obtaining immediate information on bear-human conflicts allows managers to respond promptly to mitigate further conflicts. Proactive mitigation includes notifying other backcountry users, issuing advisories or recommendations, or issuing closures to prevent further conflicts and maintain public safety. Glacier Bay National Park and Preserve currently uses Form 10–405 ''Tatshenshini—Alsek River Bear Report and Form 10–406 ''Bear Information Management Report'' to record bear sightings when a bear enters a camp, approaches the group, damages gear, obtains food, and/or acts in an aggressive or threatening manner towards the group. We are requesting to add a new system-wide form to this collection. Proposed form 10–407 ''National Park Service Bear Sighting and Encounter Reports'' will be available in any areas managed by the National Park Service where bear sightings may occur.

Title of Collection: National Park Service Bear Sighting and Encounter Reports.

OMB Control Number: 1024–0281.

Form Number: 10–405, ''Tatshenshini—Alsek River Bear Report,'' 10–406, ''Bear Information Management Report'', and 10–407 ''National Park Service Bear Sighting and Encounter Reports.''

Type of Review: Revision of a currently approved collection.

Description of Respondents: General Public.

Total Estimated Number of Annual Respondents: 478.

Total Estimated Number of Annual Responses: 478.

Estimated Completion Time per Response: Average 5 minutes.

Total Estimated Number of Annual Burden Hours: 54 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2024–01557 Filed 1–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037281; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Central Washington University, Ellensburg, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Central Washington University intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Yakima County, WA.

DATES: Repatriation of the cultural items in this notice may occur on or after February 26, 2024.

ADDRESSES: Lourdes Henebry-DeLeon, Department of Anthropology and Museum Studies, Central Washington University, 400 University Way, Ellensburg, WA 98926–7544, telephone (509) 963–2671, email *Lourdes.Henebry-DeLeon@cwu.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 Central Washington University. 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 Central Washington University.

Description

The two cultural items were removed from Cowiche Canyon in Yakima County, WA. The two unassociated funerary objects are one small brass pendant and one piece of matting taken from a Native American grave. There is no information on how or when Central Washington University acquired the items.

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: archeological, geographical, and historical.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Central Washington University has determined that:

- The two 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.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Confederated Tribes and Bands of the Yakama Nation.

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 February 26, 2024. If competing requests for repatriation are received, the Central Washington University 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 Central Washington University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9.

Dated: January 18, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–01537 Filed 1–25–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2024–0002]

Advisory Committee on Construction Safety and Health (ACCSH): Notice of Meetings

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

ACTION: Notice of ACCSH Committee and Workgroup meetings.

SUMMARY: The Advisory Committee on Construction Safety and Health (ACCSH) will meet February 22, 2024. ACCSH Workgroups will meet on February 21, 2024.

DATES:

ACCSH meeting: ACCSH will meet from 9 a.m. to 4 p.m., ET, Thursday, February 22, 2024.

ACCSH Workgroup meetings: ACCSH Workgroups will meet Wednesday, February 21, 2024. (See ACCSH Workgroup Meetings in the **SUPPLEMENTARY INFORMATION** section of this notice for ACCSH Workgroup meetings scheduled times.)

ADDRESSES:

Submission of comments and requests to speak: Submit comments and requests to speak at the ACCSH meeting by Thursday, February 15, 2024, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2024–0002), using the following method:

Electronically: Comments and requests to speak, including attachments, must be submitted electronically at: *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Requests for special accommodations: Submit requests for special accommodations for this ACCSH meeting by Thursday, February 15, 2024, to Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2020; email: *jameson.grettah@dol.gov.*

FOR FURTHER INFORMATION CONTACT:

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

For general information about ACCSH: Mr. Damon Bonneau, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2114; email: *bonneau.damon@dol.gov*.

Telecommunication requirements: For additional information about the telecommunication requirements for the meeting, please contact Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2020; email: *jameson.grettah@dol.gov.*

For copies of this Federal Register Notice: Electronic copies of this **Federal Register** Notice are available at: *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on OSHA's website at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

ACCSH advises the Secretary of Labor and the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA)) (40 U.S.C. 3701 *et seq.*) and the

Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3). In addition, the CSA and OSHA regulations require the Assistant Secretary to consult with ACCSH before the agency proposes occupational safety and health standards affecting construction activities (40 U.S.C. 3704; 29 CFR 1911.10).

ACCSH operates in accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. app. 2), and its implementing regulations (41 CFR 102–3 *et seq.*); and Department of Labor Manual Series Chapter 1–900 (3/25/2022). ACCSH generally meets two to four times a year.

II. Meetings

ACCSH Meeting

ACCSH will meet from 9 a.m. to 4 p.m., ET, Thursday, February 22, 2024. The meeting is open to the public.

Meeting agenda: The tentative agenda for this meeting includes:

- Assistant Secretary's agency update and remarks;
- Directorate of Construction industry update;
- Women in construction discussion;
- ACCSH Workgroup reports; and
- Public comment period.

ACCSH Workgroup Meetings

In conjunction with the ACCSH meeting, ACCSH Workgroups will meet on Wednesday, February 21, 2024. ACCSH Workgroup meetings are open to the public.

- Emerging Technology 9 a.m. to 11 p.m.
- Workzone 12 p.m. to 2 p.m.
- Health in Construction 2:10 to 4:10 p.m.

III. Meeting Information

The ACCSH Committee and ACCSH Workgroups will meet in Conference Room C–5521, Room 4, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Public attendance at the ACCSH Committee and Workgroup meetings will be in-person and virtual. In-person attendance will be limited to the first 25 people who register to attend the meetings in person. Please contact Ms. Gretta Jameson, OSHA, Directorate of Construction, U.S. Department of Labor; telephone (202) 693–2020; email: *jameson.grettah@dol.gov,* to register. In-person meeting attendance registration must be completed by Thursday, February 15, 2024. Meeting in-person attendees must use the visitor's entrance located at 3rd & C Streets, NW. Virtual meeting attendance information will be posted in the Docket (Docket No. OSHA–2024–0002) and on the ACCSH website, *https://www.osha.gov/advisorycommittee/accsh,* prior to the meeting.

Requests to speak and speaker presentations: Attendees who wish to address ACCSH must submit a request to speak, as well as any written or electronic presentation, by Thursday, February 15, 2024, using the method listed in the **ADDRESSES** section of this notice. The request must state:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of your presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats.

Alternately, you may request to address ACCSH briefly during the public-comment period. At her discretion, the ACCSH Chair may grant requests to address ACCSH as time and circumstances permit.

Docket: OSHA will place comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket without change, and those documents may be available online at: *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security Numbers and birthdates. OSHA also places in the public docket the meeting transcript, meeting minutes, documents presented at the meeting, and other documents pertaining to the ACCSH meeting. These documents are available online at: *http://www.regulations.gov.* To read or download documents in the public docket for this ACCSH meeting, go to Docket No. OSHA–2024–0002 at: *http://www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *http://www.regulations.gov.* All submissions are available for inspection and copying, when permitted, at the OSHA Docket Office. For information on using *http://www.regulations.gov* to make submissions or to access the docket, click on the ''Help'' tab at the top of the homepage. Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available through that website and for assistance in using the internet to locate submissions and other documents in the docket.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice pursuant to 29 U.S.C. 655, 40 U.S.C. 3704, Secretary of Labor's Order No. 8–2020 (85 FR 58393), 5 U.S.C. app. 2, and 29 CFR part 1912.

Signed at Washington, DC, on January 19, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–01534 Filed 1–25–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Worker's Compensation Programs

[OMB Control No. 1240–0055]

Proposed Extension of Information Collection; [Authorization and Certification/Letter of Medical Necessity (CA–26/CA–27)

AGENCY: Division of Federal Employees' Longshore and Harbor Workers' Compensation, Office of Workers' Compensation, (OWCP/DFELHWC), Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, OWCP/DFELHWC is soliciting comments on the information collection for Authorization and Certification/Letter of Medical Necessity, CA–26/CA–27.

DATES: All comments must be received on or before March 26, 2024.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL- OWCP/DFELHWC, Office of

Workers' Compensation Programs, Division of Federal Employees' Longshore and Harbor Workers' Compensation, U.S. Department of Labor, 200 Constitution Ave. NW, Room S–3323, Washington, DC 20210.

- OWCP/DFELHWC will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, Division of Federal Employees Longshore, and Harbor Workers' Compensation, OWCP/DFELHWC, at *suggs.anjanette@dol.gov* (email); (202) 354–9660.

SUPPLEMENTARY INFORMATION:

I. Background

In 2013, the President of the United States, Barack Obama, signed a law which provides greater Federal oversight over compounding pharmacies that custom mix medication in bulk for patients who may benefit from prescriptions that are specific to their individual medical needs. *See* Compounding Quality Act, Public Law 113–54, 127 Stat. 587 (2013). Compounded medications (which may contain opioids) have two or more ingredients and are offered as an alternative to FDA-approved medications that do not meet an individual patient's health needs, such as when a patient has an allergy that requires a medication to be made without a certain dye. *See Compounding and the FDA: Questions and Answers,* FDA, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/PharmacyCompounding/ucm339764.htm.*

The President had previously announced in October 2015 that several initiatives would be undertaken by the Federal Government as it related to opioid abuse and the heroin epidemic, noting that the Centers for Disease Control and Prevention (CDC) reported that overdose deaths involving prescription opioids quadrupled between 1999 and 2013, with more than 16,000 deaths in 2013. The CDC has identified addiction to prescription pain medication as the strongest risk factor for heroin addiction.

On March 23, 2016, the President, responding to the escalation of prescription opioid abuse and the heroin epidemic, announced several actions taken by his Administration to address the epidemic, including steps to expand access for treatment, prevent overdose deaths and increase community prevention strategies.

Compounded drugs are not FDA-approved. This means that the FDA does not verify the safety or effectiveness of compounded drugs. Consumers and health professionals rely on the drug approval process to ensure that drugs are safe and effective and made in accordance with Federal quality standards. Compounded drugs also lack an FDA finding of manufacturing quality before such drugs are marketed.

Health risks associated with compounded drugs include the use of ingredients that may be sub- or super-potent, contaminated, or otherwise adulterated. Additionally, patients may use ineffective compounded drugs instead of FDA-approved drugs that have been shown to be safe and effective.

Impacts on the FECA Program

The Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.,* provides compensation benefits to Federal employees for work-related injury/illness and to their surviving dependents if a work-related injury/illness results in the employee's death. Section 8145 provides the Secretary of Labor the authority to delegate the responsibility to administer the FECA program to OWCP; through this delegation OWCP has the authority and the responsibility to decide all questions arising under the FECA. 5 U.S.C. 8145.

Section 8103 provides:

The United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation. 5 U.S.C. 8103.

A number of injured workers receiving benefits under the FECA program are prescribed opioid medication. While most prescriptions are short term in nature, some patients remain on these habit-forming medications for a long period of time.

Statutorily, FECA is mandated to provide medically necessary supplies and services to treat work related injuries. However, the FECA statute gives broad discretionary authority to determine the medical necessity of supplies and services used to treat work related injuries. Due to the safety concerns for both compounded drugs and opioids, the Department of Labor has deemed it necessary to more closely review the medical necessity of these medications in FECA claims by instituting a pre-authorization process.

OWCP believes that the two forms used to monitor compound and opiate medication further strengthens medical management procedures for prescription drugs, assist our stakeholders in controlling costs from medically unnecessary treatments, and lessen the impact of potential drug addiction and medical fraud.

A major goal of the FECA program is to return an injured employee back to employment as soon as medically feasible. The forms that are in use serve as a means for injured workers to continue receiving opioids and compounded drugs only where medically necessary and simultaneously give OWCP greater oversight in monitoring their use.

OWCP has issued regulations relating to its authority to require prior authorization for medical treatment which will now be applied through these forms to compounded drugs and opioids. (20 CFR 10.310, 10.800 & 10. 809). Requiring Prior Authorization will assist OWCP in determining whether the prescribed medication will assist in curing, giving relief, and lessening the degree of disability. FECA further provides OWCP the authority to conduct such investigation as necessary before making an award of compensation (including the need for medical treatment by certain prescription drugs). 5 U.S.C. 8124(a)(2). Finally, 5 U.S.C. 8149 provides OWCP the authority to prescribe rules and regulations necessary for the administration of FECA.

As such, the CA–26, Authorization Request form and Certification/Letter of Medical Necessity for Compounded Drugs, and CA–27, Authorization Request form and Certification/Letter of Medical Necessity or Opioid Medications, fulfill these requirements and obligations under the FECA.

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection (ICR) titled, ''Authorization and Certification/Letter of Medical Necessity'', CA–26/CA–27.

OWCP/DFELHWC is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP/DFELHWC's estimate of the burden related to the information collection, including the validity of the

methodology and assumptions used in the estimate;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

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

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP/DFELHWC located at 200 Constitution Avenue NW, Room S–3323, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns the Authorization and Certification/Letter of Medical Necessity, CA–26/CA–27.

OWCP/DFELHWC has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Office of Workers' Compensation Programs, Division of Federal Employees' Longshore, and Harbor Workers' Compensation, OWCP/DFELHWC.

OMB Number: 1240–0055.

Affected Public: Individuals or households; business or other for-profit.

Number of Respondents: 1,104.

Frequency: On occasion.

Number of Responses: 4,212.

Annual Burden Hours: 2,106 hours.

Annual Respondent or Recordkeeper Cost: $241,685.00.

OWCP Form CA–26/CA–27, Authorization and Certification/Letter of Medical Necessity.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2024–01535 Filed 1–25–24; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24–005]

Information Collection: NASA New Technology Reporting System

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection; renewal of existing approved collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Comments are due by March 26, 2024.

ADDRESSES: Written comments and recommendations for this 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to NASA PRA Clearance Officer, Bill Edwards-Bodmer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, phone 757–864–7998, or email *hq-ocio-pra-program@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Personnel performing research and development are required by statutes, NASA implementing regulations, and OMB policy to submit reports of inventions, patents, data, and copyrights, including the utilization and disposition of same. The NASA New Technology Summary Report reporting form is being used for this purpose. This information is required to ensure the proper disposition of rights to inventions made in the course of NASA-funded research contracts. The requirement is codified in 48 CFR part 1827. The legislative authorities are 42 U.S.C. 2457 *et seq.,* and 35 U.S.C. 200 *et seq.*

II. Methods of Collection

NASA FAR Supplement clauses for patent rights and new technology encourage personnel to use an electronic form and provide a hyperlink to the electronic New Technology Reporting System (e-NTR) site: *http://invention.nasa.gov.* This website has been set up to help NASA employees and parties under NASA funding agreements (*i.e.,* contracts, grants, cooperative agreements, and subcontracts) to report new technology information directly to NASA via a secure internet connection.

III. Data

Title: NASA New Technology Reporting System.

OMB Number: 2700–0052.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses, colleges and university, and/or other for-profit institutions.

Estimated Annual Number of Activities: 3,372.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 3,372.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 10,116.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2024–01286 Filed 1–25–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TIME AND DATE: The Members of the National Council on Disability (NCD) will hold a quarterly business meeting

on Thursday, February 8, 2024, 1 p.m.–5:30 p.m., Eastern Standard Time (EST).

PLACE: This meeting will occur via Zoom videoconference. Registration is not required. Interested parties are encouraged to join the meeting in an attendee status by Zoom Desktop Client, Mobile App, or Telephone to dial-in. Updated information is available on NCD's event page at *https://www.ncd.gov/meeting/2024-02-08-feb-8-2024-council-meeting/.* To join the Zoom webinar, please use the following URL: *https://us06web.zoom.us/j/87206638472?pwd=S3YzSEt6U0pZK2RwY2oyOFVDblhsUT09* or enter Webinar ID: 872 0663 8472 in the Zoom app. The Passcode is: 378669.

To join the Council Meeting by telephone, dial one of the preferred numbers listed. The following numbers are (for higher quality, dial a number based on your current location): (309) 205 3325; (312) 626 6799; (646) 876 9923; (646) 931 3860; (301) 715 8592; (305) 224 1968; (669) 444 9171; (669) 900 6833; (689) 278 1000; (719) 359 4580; (253) 205 0468; (253) 215 8782 or (346) 248 7799. You will be prompted to enter the meeting ID 872 0663 8472 and passcode 378669. International numbers are also available: *https://us06web.zoom.us/u/kWvhpZ0c6.*

In the event of audio disruption or failure, attendees can follow the meeting by accessing the Communication Access Realtime Translation (CART) link provided. CART is text-only translation that occurs real time and is not an exact transcript.

MATTERS TO BE CONSIDERED: Following welcome remarks and introductions, the Council will remember Chairman Andrés Gallegos, who passed away in December; the Executive Committee will provide their report; followed by the Acting Chair's report; Council Member community report-outs; a presentation on proposed changes to the disability questions in the Census Bureau's American Community Survey; a break; followed by a panel on ground transportation for wheelchair users; a public comment session regarding ground transportation for wheelchair users; policy project updates, including a summary and vote on NCD's Germline Editing report; Council Member training on time records; and convening a short closed session, before adjourning. The end of the meeting will be closed to the public and will be conducted to discuss internal personnel rules and practices, pursuant to paragraph (c)(2) of the Sunshine Act, and in accordance with a determination made by the NCD Acting Chair.

Agenda: The times provided below are approximations for when each agenda item is anticipated to be discussed (all times Eastern Standard Time):

Thursday, February 8, 2024

1:00–1:05 p.m.—Welcome and Call to Order
1:05–1:20 p.m.—Remembering Chairman Andrés Gallegos
1:20–1:35 p.m.—Executive Committee Report
1:35–1:45 p.m.—Acting Chair Report
1:45–2:15 p.m.—Council Member Community Report Outs
2:15–2:45 p.m.—Proposed Changes to the Disability Questions in the American Community Survey
2:45–3:00 p.m.—BREAK
3:00–4:00 p.m.—Ground Transportation for Wheelchair Users Panel
4:00–4:30 p.m.—Ground Transportation Experiences Public Comment
4:30–5:00 p.m.—Policy Update
5:00–5:10 p.m.—Council Member Time Records
(End of the public meeting announced; formal adjournment to occur in closed session)
5:10–5:30 p.m.—CLOSED SESSION
5:30 p.m.—Adjournment from the closed session

Public Comment: Your participation during the public comment period provides an opportunity for us to hear from you—individuals, businesses, providers, educators, parents and advocates. Your comments are important in bringing to the Council's attention and issues and priorities of the disability community.

For the February 8 Council meeting, NCD will have a public comment session to receive input on experiences with ground transportation. Additional information on specifics of the topic and guidelines are available on NCD's public comment page at *https://www.ncd.gov/public-comment/.*

Because of the virtual format, the Council will receive public comment by email or by video or audio over Zoom. To provide public comment during an NCD Council Meeting, NCD now requires advanced registration by sending send an email to *PublicComment@ncd.gov* with the subject line ''Public Comment'' and your name, organization, state, and topic of comment included in the body of your email. Deadline for registration is February 7, 8:00 p.m. EDT.

While public comment can be submitted on any topic over email, comments during the meeting should be specific to ground transportation experiences, as the input is needed for an upcoming report.

If any time remains following the conclusion of the comments of those registered, NCD may call upon those who desire to make comments but did not register.

CONTACT PERSON FOR MORE INFORMATION: Nicholas Sabula, Public Affairs Specialist, NCD, 1331 F Street NW, Suite 850, Washington, DC 20004; 202–272–2004 (V), or *nsabula@ncd.gov.*

Accommodations: An ASL interpreter will be on-camera during the entire meeting, and CART has been arranged for this meeting and will be embedded into the Zoom platform as well as available via streamtext link. The web link to access CART (in English) is: *https://www.streamtext.net/player?event=NCD.*

If you require additional accommodations, please notify Stacey Brown by sending an email to *sbrown@ncd.gov* as soon as possible, no later than 24 hours before the meeting.

Due to last-minute confirmations or cancellations, NCD may substitute items without advance public notice.

Dated: January 23, 2024.

Anne C. Sommers McIntosh,

Executive Director.

[FR Doc. 2024–01725 Filed 1–24–24; 4:15 pm]

BILLING CODE 8421–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 29, and February 5, 12, 19, 26, March 4, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be

added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of January 29, 2024

There are no meetings scheduled for the week of January 29, 2024.

Week of February 5, 2024—Tentative

There are no meetings scheduled for the week of February 5, 2024.

Week of February 12, 2024—Tentative

There are no meetings scheduled for the week of February 12, 2024.

Week of February 19, 2024—Tentative

Thursday, February 22, 2024

9:00 a.m. Update on Research and Test Reactors Regulatory Program (Public Meeting) (Contact: Wesley Deschaine: 404–997–5301)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of February 26, 2024—Tentative

There are no meetings scheduled for the week of February 26, 2024.

Week of March 4, 2024—Tentative

There are no meetings scheduled for the week of March 4, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: January 24, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–01729 Filed 1–24–24; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482; NRC–2024–0028]

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1; License Amendment Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Renewed Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation, for operation of the Wolf Creek Generating Station, Unit 1. The proposed amendment would modify the implementation date of License Amendment No. 238 for Wolf Creek Generating Station, Unit 1.

DATES: Submit comments by February 26, 2024. Request for a hearing or petitions for leave to intervene must be filed by March 26, 2024.

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–2024–0028. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Samson Lee, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3168; email: *Samson.Lee@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0028 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–2024–0028.
- *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 license amendment request to modify the implementation date of License Amendment No. 238 is available in ADAMS under Accession No. ML24018A248.
- *NRC's PDR*: The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0028 in your comment submission.

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

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

submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Renewed Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation, for operation of the Wolf Creek Generating Station, Unit 1, located in Coffey County, Kansas.

By letter dated August 31, 2023 (ADAMS Accession No. ML23165A250), the NRC issued Amendment No. 237 to Renewed Facility Operating License No. NPF–42 for the Wolf Creek Generating Station, Unit 1. The amendment revised License Condition 2.C.(5), ''Fire Protection (Section 9.5.1, SER [Safety Evaluation Report], Section 9.5.1.8, SSER [Supplement to SER] #5),'' and the Updated Safety Analysis Report to allow the use of hard hat mounted portable lights as the primary emergency lighting means in certain fire areas for illuminating safe shutdown equipment, and access and egress routes to the equipment. By letter dated October 19, 2023 (ADAMS Accession No. ML23292A357), Wolf Creek Nuclear Operating Corporation requested correction of the NRC staff safety evaluation (SE) for Amendment No. 237. Wolf Creek Nuclear Operating Corporation stated that it could not implement the amendment as described in the SE, and requested modification of the implementation date for Amendment No. 237. By letter dated November 29, 2023 (ADAMS Accession No. ML23299A266), the NRC issued Amendment No. 238 to extend the implementation date for Amendment No. 237 to February 27, 2024, as requested. By letter dated January 18, 2024 (ADAMS Accession No. ML24018A248), Wolf Creek Nuclear Operating Corporation stated that additional time is necessary to implement Amendment No. 237, and requested modification of the implementation date from February 27, 2024, to February 27, 2025.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration (NSHC). Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented as follows:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed modification to provide an additional year for implementation for License Amendment Number 237 does not involve a significant increase in the probability or consequences of an accident previously evaluated. The existing Fire Protection Program will remain in effect during the modified implementation period.

The current Fire Protection program and associated post-fire operator manual actions for a fire outside the control room will continue to remain feasible and reliable, demonstrating that the plant can be safely shutdown in the event of a fire. The use of the existing Fire Protection Program will not adversely affect the performance of operator manual actions in support of applicable procedures.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed modification to provide an additional year for implementation for License Amendment Number 237 does not create the possibility of a new or different kind of accident from any accident previously evaluated. The existing Fire Protection Program will remain in effect during the modified implementation period. Considering the current Fire Protection remains in place, no physical alteration of the plant will occur and does not result in the installation of any new or different kind of equipment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed modification to provide an additional year for implementation for License Amendment Number 237 is not a reduction in a margin of safety. The existing Fire Protection

Program will remain in effect during the modified implementation period and has an acceptable margin of safety and has been approved by the NRC.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves NSHC.

The NRC is seeking public comments on this proposed determination that the license amendment request involves NSHC. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice (the notice period). However, if circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the notice period, provided that its final determination is that the amendment involves NSHC. The final determination will consider all public and State comments received. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated January 18, 2024 (ADAMS Accession No. ML24018A248).

Attorney for licensee: Chris Johnson, Corporate Counsel Directory, Evergy, One Kansas City Place, 1KC—Missouri HQ 16, 1200 Main Street, Kansas City, MO 64105.

NRC Branch Chief: Jennivine K. Rankin.

Dated: January 22, 2024.

For the Nuclear Regulatory Commission.

Samson Lee,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2024–01529 Filed 1–25–24; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act, notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, February 15, 2024. There will be no in-person gathering for this meeting.

DATES: The virtual meeting will be held on February 15, 2024, beginning at 10 a.m. (ET).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, 202–606–2858, or email *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public. Reports for calendar years 2008 to 2022 are posted at *http://www.opm.gov/fprac.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

This meeting is open to the public, with an audio option for listening. This notice sets forth the participation guidelines for the meeting.

Meeting Agenda. The committee meets to discuss various agenda items related to the determination of prevailing wage rates for the Federal Wage System. The committee's agenda is approved one week prior to the public meeting and will be available upon request at that time.

Public Participation: The February 15, 2024, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *pay-leave-policy@opm.gov* with the subject line ''February 15, 2024'' no later than Tuesday, February 13, 2024.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by February 13, 2024.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–01590 Filed 1–25–24; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35095; 812–15468]

AB CarVal Opportunistic Credit Fund, et al.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges.

APPLICANTS: AB CarVal Opportunistic Credit Fund, AB CarVal Investors, L.P., AB Multi-Manager Alternative Fund, AllianceBernstein L.P., Sanford C. Bernstein & Company, LLC, and AllianceBernstein Investments, Inc.

FILING DATES: The application was filed on May 22, 2023, and amended on August 4, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on February 16, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: William Bielefeld, Esq., Dechert LLP, *William.bielefeld@dechert.com* with a copy to Matthew Bogart, Esq., AB CarVal Opportunistic Credit Fund.

FOR FURTHER INFORMATION CONTACT: Stephan N. Packs, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' First Amended and Restated Application, dated August 4, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/*

legacy/companysearch.html. You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: January 23, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01593 Filed 1–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99408; File No. SR–MIAX–2023–23]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

January 22, 2024.

On June 7, 2023, Miami International Securities Exchange, LLC (''MIAX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–MIAX–2023–23) to increase fees for the MIAX Top of Market (''ToM'') market data product and establish fees for the MIAX Complex Top of Market (''cToM'') market data product. The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 26, 2023.[4] On August 3, 2023, the Commission issued an order temporarily suspending the proposed rule change pursuant to section 19(b)(3)(C) of the Act[5] and simultaneously instituting proceedings under section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On December 20, 2023, pursuant to section 19(b)(2) of the Exchange Act,[8] the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[9] On January 17, 2024, the Exchange withdrew the proposed rule change (SR–MIAX–2023–23).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01510 Filed 1–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99405; File No. SR–NYSEARCA–2024–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges, Also NYSE Arca Rules 7.31–E, 7.34–E, 7.36–E, 7.37–E and 7.38–E

January 22, 2024.

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 January 10, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to amend a rule reference related to the definition of Retail Orders. The Exchange is not proposing any change to fees and credits. The Exchange also proposes to amend NYSE Arca Rules 7.31–E, 7.34–E, 7.36–E, 7.37–E and 7.38–E. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend a rule reference related to the definition of Retail Orders. The Exchange is not proposing any change to fees and credits. The Exchange also proposes to amend NYSE Arca Rules 7.31–E, 7.34–E, 7.36–E, 7.37–E and 7.38–E to delete references to an obsolete rule.

Currently, the Exchange's Fee Schedule provides specified fees and credits for agency orders that originate from a natural person and are submitted to the Exchange by an ETP Holder,[3] provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.[4] The Exchange's rules concerning such ''retail orders'' are set out in Rule 7.31–E(i)(4).[5] On the Fee Schedule, these orders are identified as Retail Orders. Specifically, under Section III. titled

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 97768 (June 20, 2023), 88 FR 41423 (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98050, 88 FR 53941 (August 9, 2023) (''Order Instituting Proceedings'').

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 99210, 88 FR 89484 (December 27, 2023). The Commission designated February 21, 2024, as the date by which the Commission shall approve or disapprove the proposed rule change.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 1.1 (definitions of ETP & ETP Holder).

[4] *See* Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR–NYSEArca–2012–77).

[5] *See* Securities Exchange Act Release No. 94121 (February 1, 2022), 87 FR 6900 (February 7, 2022) (SR–NYSEARCA–2022–07). Rule 7.31–E(i)(4)(A) provides that an ''order designated with a ''retail'' modifier is an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

Standard Rates—Transactions, footnote (c) currently states that ''Retail Order means an order as defined in Rule 7.44–E(a)(3).''

In a recent rule filing that discontinued the Exchange's Retail Liquidity Program, the Exchange deleted Rule 7.44–E in its entirety, including Rule 7.44–E(A)(3), which defined the term Retail Order.[6] Given the discontinuance of the Retail Liquidity Program on the Exchange, and the subsequent deletion of Rule 7.44–E(a)(3), the Exchange proposes to amend footnote (c) under Section III. of the Fee Schedule to replace the cross-reference in the footnote from now deleted Rule 7.44–E(A)(3) to Rule 7.31–E(i)(4). As proposed, footnote (c) would state that ''Retail Order means an order designated with a ''retail'' modifier as provided in Rule 7.31–E(i)(4).'' Additionally, Rules 7.31–E, 7.34–E, 7.36–E, 7.37–E and 7.38–E each currently contain a reference to Rule 7.44–E, which, as noted above, was deleted when the Exchange discontinued its Retail Liquidity Program. The Exchange thus proposes to also delete reference to Rule 7.44–E from Rule 7.31–E, 7.34–E, 7.36–E, 7.37–E and 7.38–E.

The Exchange believes the proposed change would delete reference to an obsolete rule from the Exchange's rules and correct a rule reference in the Fee Schedule by replacing a cross-reference in the Fee Schedule from a rule that was recently deleted and is now obsolete to Rule 7.31–E(i)(4) which is currently in effect and which defines ''retail orders.''

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of sections 6(b)(4) and(5) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

In particular, the Exchange believes its proposal to replace Rule 7.44–E(a)(3) from footnote (c) under Section III. of the Fee Schedule with Rule 7.31–E(i)(4) to correct the cross-reference are consistent with the Act because the proposed change would update the Exchange's rules to delete an obsolete rule and update the Fee Schedule to correct a cross-reference from a recently deleted rule to a current rule. The proposal otherwise involves no substantive change. Additionally, the proposed change would promote just and equitable principles of trade and is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system as it would update the Exchange's rules to delete reference to an obsolete rule and update the Fee Schedule by replacing a cross-reference from a rule that is now obsolete to a rule currently in effect.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[9] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe that its proposal to amend the Fee Schedule to correct a cross-reference from a rule that was recently deleted to a current rule will have any impact on competition as the change is intended to update obsolete rule references and involves no substantive change.

Intermarket Competition. The Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market. ETP Holders have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. By amending the cross-reference, as proposed herein, the Exchange is updating obsolete rule references to its rules and to the Fee Schedule. Accordingly, the Exchange does not believe its proposed change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the 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, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange states that the proposed change will not adversely impact investors and will permit the Exchange to amend the cross reference from an obsolete rule to a current rule in order to alleviate potential investor or public confusion. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is

[6] *See* Securities Exchange Act Release No. 98168 (August 18, 2023), 88 FR 57980 (August 24, 2023) (SR–NYSEARCA–2023–55). There is no substantive difference between the definition of Retail Order under current Rule 7.31–E and how a Retail Order was defined under the now deleted Rule 7.44–E.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] 15 U.S.C. 78f(b)(8).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2024–04 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NYSEARCA–2024–04. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR–NYSEARCA–2024–04, and should be submitted on or before February 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

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[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99407; File No. SR–EMERALD–2023–13]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Withdrawal of Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

January 22, 2024.

On June 7, 2023, MIAX Emerald, LLC (''MIAX Emerald'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File Number SR–EMERALD–2023–13) to increase fees for the MIAX Emerald Top of Market (''ToM'') market data product and establish fees for the MIAX Emerald Complex Top of Market (''cToM'') market data product. The proposed rule change was immediately effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on June 26, 2023.[4] On August 3, 2023, the Commission issued an order temporarily suspending the proposed rule change pursuant to section 19(b)(3)(C) of the Act[5] and simultaneously instituting proceedings under section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On December 20, 2023, pursuant to section 19(b)(2) of the Exchange Act,[8] the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[9] On January 17, 2024, the Exchange withdrew the proposed rule change (SR–EMERALD–2023–13).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] *See* Securities Exchange Act Release No. 97767 (June 20, 2023), 88 FR 41442 (''Notice'').

[5] 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 98051, 88 FR 53937 (August 9, 2023) (''Order Instituting Proceedings'').

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 99209, 88 FR 89485 (December 27, 2023). The Commission designated February 21, 2024, as the date by which the Commission shall approve or disapprove the proposed rule change.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99409; File No. SR–NYSEARCA–2024–05]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the COtwo Advisors Physical European Carbon Allowance Trust Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares)

January 22, 2024.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 10, 2024, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the COtwo Advisors Physical European Carbon Allowance Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the COtwo Advisors Physical European Carbon Allowance Trust (the ''Trust''), under NYSE Arca Rule 8.201–E, which governs the listing and trading of Commodity-Based Trust Shares.[4]

The Trust was formed as a Delaware statutory trust on January 12, 2023.[5] The Trust has no fixed termination date. The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,[6] and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.[7]

The sponsor of the Trust is COtwo Advisors LLC, a Delaware limited liability company (''Sponsor''). State Street Bank and Trust Company serves as the Trust's administrator (the ''Administrator'') to perform various administrative, accounting and recordkeeping functions on behalf of the Trust. Wilmington Trust serves as trustee of the Trust (the ''Trustee''). State Street Bank and Trust Company serves as the Trust's transfer agent (the ''Transfer Agent'') and as custodian of the Trust's cash, if any (''Cash Custodian'').[8]

The Exchange represents that the Shares will satisfy the requirements of NYSE Arca Rule 8.201–E and thereby will qualify for listing on the Exchange.

Operation of the Trust[9]

The investment objective of the Trust will be for the Shares to reflect the performance of the price of EU Carbon Emission Allowances for stationary installations (''EUAs''), less the Trust's expenses. The Trust intends to achieve its objective by investing all of its assets in EUAs on a non-discretionary basis (*i.e.,* without regard to whether the value of EUAs is rising or falling over any particular period). Shares of the Trust will represent units of fractional undivided beneficial interest in and ownership of the Trust. The Trust's only ordinary recurring expense will be the Sponsor's annual fee. The Trust will not hold any assets other than EUAs and, possibly, a very limited amount of cash to pay Trust expenses. The Trust may also cause the Sponsor to receive EUAs from the Trust in such a quantity as may be necessary to pay the Sponsor's annual fee.

The Trust will not invest in futures, options, options on futures, or swap contracts. The Trust will not hold or trade in commodity futures contracts, ''commodity interests,'' or any other instruments regulated by the Commodity Exchange Act. As stated above, the Trust's Cash Custodian may hold cash proceeds from EUA sales to pay Trust expenses. All EUAs will be held in the Union Registry (defined below).

The Trust is not a proxy for investing in EUAs. Rather, the Shares are intended to provide a cost-effective means of obtaining investment exposure through the securities markets that is similar to an investment in EUAs. Specifically, the Shares are intended to constitute a simple and cost-efficient means of gaining investment benefits similar to those of holding EUAs directly, by providing investors an opportunity to participate in the EUA market through an investment in the Shares, instead of the traditional means of purchasing and storing EUAs. Trust shareholders will be exposed to the risks of investing in EUAs, as well as to additional risks that are unrelated to EUAs. For example, the public trading price at which an investor buys or sells Shares during the day from their broker may be different from the value of the Trust's holdings. Price differences may relate primarily to supply and demand forces at work in the secondary trading market for the Trust's Shares that are closely related to, but not identical to, the same forces influencing the prices of EUAs, cash and cash equivalents that constitute the Trust's assets. In addition, EUAs will have to be sold to pay Trust expenses that would not be associated with an investment in EUAs. Additional risks related to the Trust's structure, the Sponsor's management of the Trust, and the tax treatment of an investment in Shares are further in the Registration Statement.

EUAs and the EUA Industry

Description of EU Emissions Trading Scheme

According to the Registration Statement, the European Union Emissions Trading System (''EU ETS'') is a ''cap and trade'' system that caps the total volume of greenhouse gas (''GHG'') emissions from installations and aircraft operators responsible for around 40% of European Union (''EU'') GHG emissions.[10] The EU ETS is the largest cap and trade system in the world and covers more than 11,000 power stations and industrial plants in 31 countries, and flights between airports of participating countries. The EU ETS is administered by the EU Commission, which issues a predefined amount of EUAs through auctions or

[4] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the trust.

[5] On May 12, 2023, the Trust filed with the Commission a registration statement on Form S–1 (File No. 333–271910) (the ''Registration Statement'') under the Securities Act of 1933 (15 U.S.C. 77a) (the ''Securities Act''). The description of the operation of the Trust herein is based, in part, on the Registration Statement. The Registration Statement in not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[6] 15 U.S.C. 80a–1.

[7] 17 U.S.C. 1.

[8] The Cash Custodian is responsible for holding the Trust's cash as well as receiving and dispensing cash on behalf of the Trust in connection with the payment of Trust expenses.

[9] The description of the operation of the Trust, the Shares, and the carbon credit industry contained herein are based, in part, on the Registration Statement. *See* note 5, *supra.*

[10] There are two types of EU emissions allowance: (i) general allowances for stationary installations, or EUA; and (ii) allowances for the aviation sector (''EUAA''). The Trust will hold EUAs only.

free allocation. An EUA represents the right to emit one metric ton of carbon dioxide equivalent into the atmosphere by operators of stationary installations (''Covered Entities''). By the end of April each year, all Covered Entities are required to surrender EUAs equal to the total volume of actual emissions from their installation for the last calendar year. EU ETS operators can buy or sell EUAs to achieve EU ETS compliance.

In 2012, EU ETS operations were centralized into a single EU registry operated by the EU Commission (the ''Union Registry''), which covers all countries participating in the EU ETS. According to the Registration Statement, the Union Registry is an online database that holds accounts for all entities covered by the EU ETS as well as for participants (such as the Trust) not covered under the EU ETS. The Union Registry can be accessed online in a similar manner to online banking systems. An account must be opened in the Union Registry by a legal or natural person before being able to participate in the EU ETS and transact in EUAs. The European Union Transaction Log (''EUTL'') [11] checks, records and authorizes all transactions that take place between accounts in the Union Registry to ensure that transfers are in accordance with the EU ETS rules. The Union Registry is at all times responsible for holding the EUAs. All EUAs are held in the Union Registry.

Major Holders and Allowance Use Cases

According to the Registration Statement, while there is limited publicly available data on individuals or individual organizations' holdings in physical carbon allowances, carbon allowances are primarily held for three different use cases:

(a) Complying with the EU ETS: Companies that need to surrender allowances under the EU ETS hold allowances to surrender them annually. These positions are typically built over time and ultimately surrendered at time of compliance. Therefore, the largest emitters in the EU ETS hold a significant amount of allowances, which include entities such as large utilities with a substantial share of fossil fuel fired power plants, cement companies, steel producers, chemical producers, oil and gas majors and airlines.

(b) Providing financial services for hedging purposes or speculation, such as clearing houses for the European Energy Exchange or the Intercontinental Exchange, or banks holding allowances for their clients.

(c) Trading on and speculating around price moves, using physical emission allowances. This can take many forms, including ''yield trades'', which includes holding a physical allowance and selling an EUA future at a premium to gain the yield in the forward curve; or outright positions for short term or long term speculation.

In addition to holding physical allowances, there is a liquid secondary futures and options market that is primarily used for hedging future emissions or speculating.

Trading Location

According to the Registration Statement, the EU ETS is linked to small emissions trading systems in Europe (Norway, Switzerland, Iceland and Liechtenstein), but not to any other major cap and trade markets. Therefore, allowances handed out in the EU ETS are not transferable to any registry outside of the EU ETS and cannot be used for compliance in any other cap and trade market.

There are a number of other trading systems globally, and like the EU ETS, no allowances of any of these systems can be used in any other system:

(a) *Western Climate Initiative (WCI):* The State of California and the Canadian province Quebec created a linked cap and trade market, that covers >80% of emissions.

(b) *Regional Greenhouse Gas Initiative (RGGI):* a group of US east coast states created a linked market that covers power generators only.

(c) *The China National ETS:* Technically not a cap and trade scheme (as the amount of allowances is not fixed but calculated according to historic production of units).

(d) *South Korea ETS:* A comprehensive market covering the majority of Korean emissions.

Pricing of Allowances and Trading Volume

According to the Registration Statement, there are currently two primary avenues for trading EUAs: a primary market and a secondary market. The primary market involves participation in a regularly scheduled auction. The secondary market involves transactions between buyers and sellers on regulated markets. The contracts offered for trading are the following (1) instruments with a daily expiry, including spot EUAs and the Daily EUA Future (as defined below), (2) futures contracts with various maturities; and (3) options on futures contracts. There are also over-the-counter transactions, but they comprise a negligible percentage of transactions.

The spot and futures markets for EUAs have existed since 2005 after the formal launch of the EU ETS on January 1, 2005. Spot EUA contracts are traded exclusively on the European Energy Exchange AG (''EEX''),[12] and futures contracts are traded on EEX, and ICE Endex Markets B.V. (''ICE Endex'') [13] and Nasdaq Oslo, although the latter's market share is marginal. Additionally, options on EUA futures contracts are traded on EEX and ICE Endex, but not on Nasdaq Oslo.

According to the Registration Statement, the EUA markets are generally liquid. The classifications for market participants include five basic categories—(1) investment firms or credit institutions, (2) investment funds, (3) other financial institutions, (4) operators with compliance obligations and, (5) commercial undertakings which are non-financial firms without compliance obligations.[14] According to

[11] The EUTL is a central transaction log that checks and records all transactions taking place within the EU ETS. It is run by the European Commission and provides an easy access to emission trading data contained in the EUTL. *See https://www.eea.europa.eu/data-and-maps/dashboards/emissions-trading-viewer-1.*

[12] EEX is an exchange under the German Exchange Act and a Regulated Market (''RM''), as defined in the Markets in Financial Instruments Directive (Directive 2014/65/EC) (''MIFID II''). As a RM for spot and derivatives transactions, EEX is supervised by the Saxon State Ministry for Economic Affairs, Labour and Transport (the ''Exchange Supervisory Authority''). The Exchange Supervisory Authority is in charge of the legal supervision of EEX and of market supervision of the trading participants according to the German Exchange Act. The members of EEX are supervised by the Federal Financial Supervisory Authority (BaFin). All trading participants are required to comply with the market abuse regulations within the German Securities Trading Act. Beside this supervision, the market behavior at the spot and derivatives markets of all exchange participants is supervised on a daily basis by the Market Surveillance Office, an independent body of the exchange according to Section 7 of the German Exchange Act. *See https://www.esma.europa.eu/sites/default/files/EEX_1.pdf. See also* Rules and Regulations at *https://www.eex.com/en/markets/trading-ressources/rules-and-regulations.*

[13] ICE Endex is regulated in the Netherlands by the Dutch Authority for the Financial Markets (''AFM'') as a RM, as defined in MIFID II, which is implemented in Dutch Act on Financial Supervision (''DFSA''). The license as a RM is obtained under Section 5:26(1) of the DFSA, resulting in an authorization by the Minister of Dutch Ministry of Finance to operate a RM and supervised by the AFM. In the UK, ICE Endex is a Recognized Overseas Investment Exchange by the Financial Conduct Authority. *See https://www.ice.com/endex/regulation#:~:text=The%20Dutch%20Authority%20for%20Consumers,energy%20industry%20and%20wholesale%20trading.* ICE Endex is also recognized by the CFTC as an authorized Foreign Board of Trade. *See https://www.cftc.gov/sites/default/files/idc/groups/public/@otherif/documents/ifdocs/orgiceeregorder170110.pdf.*

[14] *See esma70–445–38_final_report_on_emission_allowances_and_associated_derivatives.pdf*(*europa.eu*).

the European Union Transaction Log, there are over 18,773 registry accounts.[15] The number of participants in the market have a direct bearing on the quality of trading. An Oxera report indicates that as the number of participants trading EUA futures has increased consistently since January 2017, relative spreads, calculated as the average quoted spread divided by the closing price, have decreased significantly—from just under 0.4% in January 2017 to roughly 0.06% in October 2021.[16] In a February 2023 publication, Refinitiv estimated the total EUA market size to be €751.5 billion, up 10% versus 2021.[17] As of January 2023, the secondary market had average daily trading volume of €2 billion, with the majority of the liquidity in the futures market. EUA auctions are held on a near-daily basis throughout the year, other than between mid-December to mid-January, when auctions are paused. Twenty-eight countries (25 EU member states plus Liechtenstein, Norway, and Iceland) have agreed to use EEX to conduct their regularly scheduled auctions. Germany and Poland have opted out of the common auction but also utilize the EEX for auctions. Hence, EUA auctions take place exclusively on EEX. These auctions take place on a regularly scheduled basis; the number of allowances being auctioned is disclosed on a schedule prior to auction. Prices achieved in these auctions are published on various publicly-accessible websites, including the European Commission's primary website.

Below is a discussion of the secondary markets for EUAs and associated derivatives. The Trust will only hold EUAs, and will not hold any of the related derivatives.

Instruments With a Daily Expiry

Instruments with daily expiry include spot EUAs traded on the EEX and the Daily EUA Future traded on ICE Endex. The Exchange notes that the settlement and economic outcome for a spot purchase on the EEX and a same day futures purchase on the ICE Endex are identical (as further detailed below). In fact, the European Securities Markets Authority (''ESMA''), in its ''Final Report: Emission Allowances and Associated Derivatives,'' uses the term ''spot'' EUAs to include both spot EUAs traded on EEX and the Daily EUA Future traded on ICE Endex.[18]

Spot EUA Market

As noted above, spot EUA contracts are traded exclusively on the EEX. The current value (spot price) for a EUA is greatly influenced by a number of factors, including regulatory changes, world events and general levels of economic activity. The trading hours for spot EUAs on EEX are 8:00 a.m. to 6:00 p.m. Central European Time (''C.E.T.''), and trade registrations are possible until 6:45 p.m. C.E.T. Trades concluded before 4:00 p.m. C.E.T. are settled on the next business day, or T+1, while trades after 4:00 p.m. C.E.T. are settled on the day after the first business day, or T+2. In the year-to-date period ended December 6, 2023, the average daily, monthly and annual trading volumes of spot EUAs on the EEX was 165,000, 3,332,000 and 39,983,000 EUAs, respectively. Over the same period, spot EUA contracts traded at their highest volume of 5,010,000 EUAs on December 1, 2023, and their lowest volume of 1000 EUAs on January 9, 2023.

The EEX calculates and publishes an EEX end of day index on the price of EEX EUA spot contracts (the ''EUA End of Day Index''). The value of the EUA End of Day Index is calculated based on an algorithm using data regarding the prices of qualifying trades and the average bids and asks of orders that meet certain order quantity requirements. In order for data regarding trades and orders to be used for calculating the value of the EUA End of Day Index, the trades or orders must satisfy certain requirements regarding (i) quantity of traded contracts, (ii) quantity of contracts per order, (iii) minimum duration of the cumulated valid best bid and best ask, and (iv) maximum spread per contract. The EUA End of Day Index calculation methodology depends on the number of valid trades and orders which fulfil the product-specific parameters.[19] The data used for calculating the EUA End of Day Index can also come from fair values collected in a price committee or from other price sources. The EUA End of Day Index price calculated is then validated against actual market prices.

Daily EUA Futures

Most liquidity in the secondary market is achieved by trading futures contracts. These contracts have expiration going out as far as 2030. A single day futures contract on EUAs is exclusively traded on the ICE Endex (the ''Daily EUA Future''), which settles each day at the close of trading.[20] The Daily EUA Future is a deliverable contract where each person with a position open at cessation of trading is obliged to make or take delivery of EUAs upon the expiration of the contract at the end of each trading day. Each Daily EUA Future represents one lot of 1,000 EUAs, with each EUA providing an entitlement to emit one ton of carbon dioxide equivalent gas. Generally, Daily EUA Futures trade on ICE Endex from approximately 2:00 a.m. Eastern Time (''E.T.'') to approximately 12:00 p.m. E.T. The settlement price is fixed each business day and is published by the exchange at approximately 12:15 E.T. Final cash settlement occurs the first business day following the expiry day. In the year-to-date period ended December 6, 2023, the average daily, monthly and annual trading volumes of Daily EUA Futures was 3,144, 68,758 and 761,046, respectively, which represents trading volumes of 3,144,000, 68,758,000 and 761,046,000 EUAs, respectively. Over the same period, Daily EUA Futures traded at their highest volume of 20,473 on July 12, 2023, representing 20,473,000 EUAs, and their lowest volume of 218 on May 8, 2023, representing 218,000 EUAs.

Comparison of Spot EUA Market and Daily EUA Futures Market

The daily EUA End of Day Index value can be expected to be substantially identical to the daily settlement price of the Daily EUA Future. Below is a comparison of the daily EUA End of Day Index value and the Daily EUA Future settlement price over a recent 45 calendar day period.

[15] *See https://ec.europa.eu/clima/ets/.*

[16] Carbon trading in the European Union: An economic assessment of market functioning in 2021, Oxera, p. 42 (February 15, 2022); available at *https://www.oxera.com/wp-content/uploads/2022/02/Oxera-EU-carbon-trading-report-3.pdf.*

[17] *See* ''Review of Carbon Markets in 2022'' (February 2023): available at *https://www.refinitiv.com/content/dam/marketing/en_us/documents/gated/reports/carbon-market-year-in-review-2022.pdf.* The report presents Refinitiv's assessment of the world's major carbon markets in 2022 and the total EUA market size includes spot, auctions and futures.

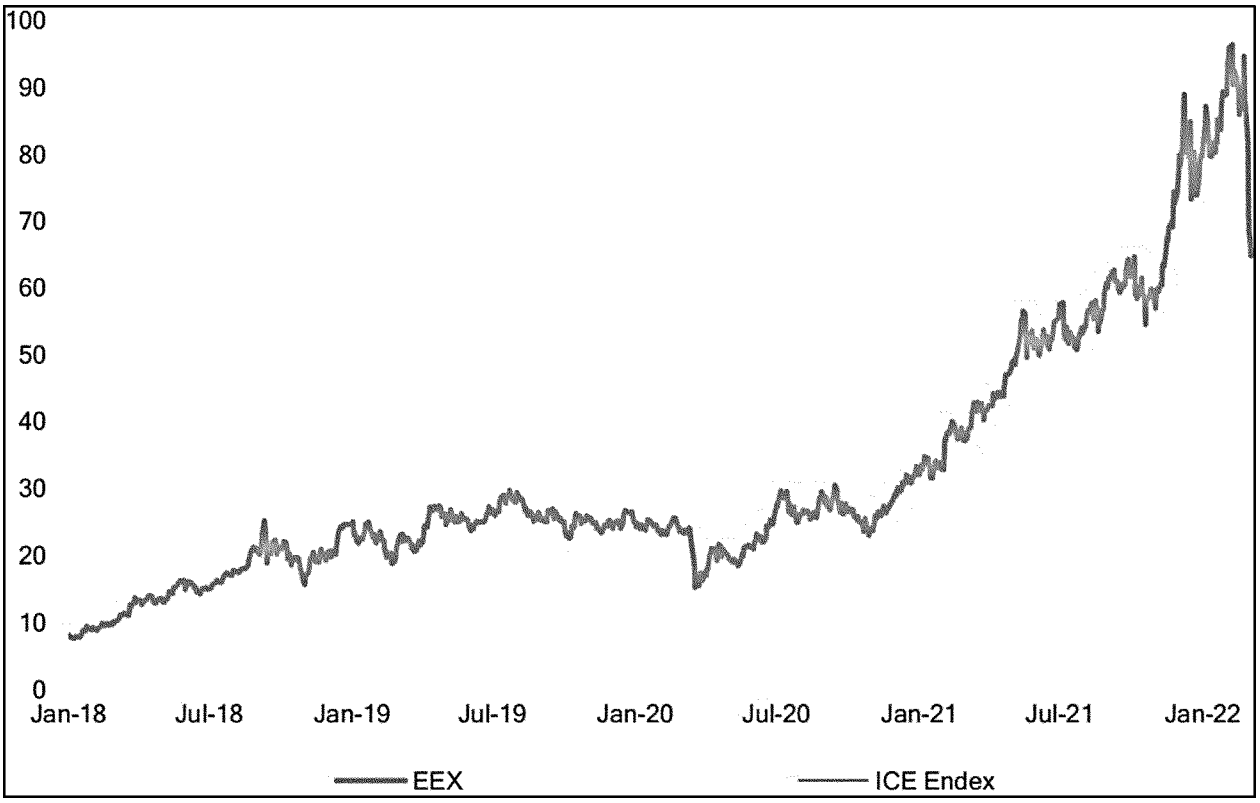
[18] *See esma70–445–38_final_report_on_emission_allowances_and_associated_derivatives.pdf* (*europa.eu*).

[19] The EUA End of Day Index methodology is available at *https://www.eex.com/fileadmin/EEX/Downloads/Trading/Specifications/Indeces/DE/20211005_Index_Description_v010.pdf.*

[20] NASDAQ Oslo also offers a single day futures contract on EUAs, but the contract is not traded. All references to the ''Daily EUA Future'' refer to the single day EUA futures contract traded on ICE Endex.

Date	EEX End of Day Index	ICE final settlement	Difference—EEX v. ICE
12/8/23	€68.56	€68.56	€0.00
12/7/23	69.58	69.58	0.00
12/6/23	68.73	68.73	0.00
12/5/23	68.54	68.54	0.00
12/4/23	70.26	70.26	0.00
12/1/23	72.38	72.38	0.00
11/30/23	70.69	70.69	0.00
11/29/23	70.87	70.87	0.00
11/28/23	72.78	72.78	0.00
11/27/23	73.45	73.45	0.00
11/24/23	76.37	76.37	0.00
11/23/23	76.35	76.35	0.00
11/22/23	74.96	74.96	0.00
11/21/23	75.12	75.12	0.00
11/20/23	76.35	76.35	0.00
11/17/23	76.28	76.28	0.00
11/16/23	76.73	76.73	0.00
11/15/23	79.42	79.42	0.00
11/14/23	78.29	78.29	0.00
11/13/23	77.14	77.14	0.00
11/10/23	78.33	78.33	0.00
11/9/23	77.03	77.02	0.01
11/8/23	75.33	75.33	0.00
11/7/23	74.88	74.88	0.00
11/6/23	75.46	75.46	0.00
11/3/23	77.24	77.24	0.00
11/2/23	78.20	78.20	0.00
11/1/23	78.10	78.10	0.00
10/31/23	78.59	78.59	0.00
10/30/23	78.25	78.25	0.00
10/27/23	78.84	78.84	0.00
10/26/23	79.14	79.14	0.00

Additionally, the chart below illustrates how closely the Daily EUA Future, in fact, reflects the EUA spot price during the trading day. This chart shows the spot prices in continuous trading on the EEX and the intra-day prices of Daily EUA Futures on ICE Endex, in EUR/tCO2 from January 2018 to January 2022. This shows an average absolute difference of €0.015 between the daily prices for EUAs on the EEX and ICE Endex.



(https://www.esma.europa.eu/sites/default/files/library/esma70-445-38_final_report_on_emission_allowances_and_associated_derivatives.pdf :p37).

Other EUA Futures Contracts

EEX offers monthly EUA futures contracts for the current and next two months unless a quarterly or December future expires at that month's maturity date; quarterly futures for the current and next 11 quarters unless a December future expires at that quarter's maturity date; and yearly, or December, futures for the next 8 years which mature in December of each respective year. ICE Endex offers up to seven December futures contracts, nine quarterly futures contracts, three August futures contracts and two monthly futures contracts. Nasdaq Oslo offers a quarterly futures contracts over a rolling six year period.

Options on EUA Futures Contracts

Options on EUA futures contracts are also traded on EEX and ICE Endex for the December futures contracts.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will create and redeem Shares on a continuous basis in one or more Creation Units. A Creation Unit equals a block of 50,000 Shares, which amount may be revised from time-to-time. The Trust will issue Shares in Creation Units to certain authorized participants (''Authorized Participants'') on an ongoing basis. Each Authorized Participant must be a registered broker-dealer or other securities market participant such as a bank or other financial institution which is not required to register as a broker-dealer to engage in securities transactions, a participant in The Depository Trust Company (''DTC'') and have entered into an agreement with the Sponsor and the Transfer Agent (the ''Participant Agreement'').

Creation Units may be created or redeemed only by Authorized Participants. The creation and redemption of Creation Units is only made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of EUAs represented by the Creation Units being created or redeemed. The amount of EUAs required to be delivered to the Trust in connection with any creation, or paid out upon redemption, is based on the combined net asset value of the number of Shares included in the Creation Units being created or redeemed as determined on the day the order to create or redeem Creation Units is properly received and accepted. Orders must be placed by 11:00 a.m. New York time. The day on which the Administrator receives a valid purchase or redemption order is the order date. Creation Units may only be issued or redeemed on a day that the Exchange is open for regular trading.

An Authorized Participant who places a purchase order is responsible for crediting the Trust's Union Registry account with the required EUA deposit by 2:00 p.m. New York time on the second business day following the order date. Upon receipt of the EUA deposit amount in the Trust's Union Registry account, the Union Registry will notify the Sponsor that the EUAs have been deposited. Upon receipt of confirmation from the Union Registry that the EUA deposit amount has been received, the Administrator will direct DTC to credit the number of Shares created to the Authorized Participant's DTC account.

According to the Registration Statement, the redemption distribution due from the Trust will be delivered once the Administrator notifies the Sponsor that the Authorized Participant has delivered the Shares to be redeemed to the Trust's DTC account. The redemption distribution will be delivered to the Authorized Participant on the second business day following the order date. Once the Administrator notifies the Sponsor that the Shares have been received in the Trust's DTC account, the Sponsor instructs the Union Registry to transfer the redemption EUA amount from the Trust's Union Registry account to the Authorized Participant's Union Registry account.

The Sponsor is the only entity that may initiate a withdrawal of EUAs from the Trust's Union Registry account, and the only accounts that may receive EUAs from the Trust's Union Registry account are Authorized Participants' or the Sponsor's Union Registry accounts.

Net Asset Value (''NAV'')

The Trust's NAV is calculated by taking the current market value of its total assets, less any liabilities of the Trust, and dividing that total by the total number of outstanding Shares.

The Administrator will calculate the NAV of the Trust once each Exchange trading day. The NAV for a normal trading day will be released after the end of the Core Trading Session, which is typically 4 p.m. New York time. The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time. The Administrator will use that day's EUA End of Day Index value, as published by EEX, to calculate the NAV. The Administrator also converts the value of Euro denominated assets into US Dollar equivalent using published foreign currency exchange prices by an independent pricing vendor. Third parties supplying quotations or market data may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Indicative Fund Value (''IFV'')

In order to provide updated information relating to the Trust for use by investors and market professionals, an updated IFV will be made available through on-line information services throughout the Exchange Core Trading Session (normally 9:30 a.m. to 4:00 p.m. E.T.) on each trading day. The IFV will be calculated by using the prior day's closing NAV per Share of the Trust as a base and updating that value throughout the trading day to reflect changes in the most recently reported bid-ask spread of the spot EUA market on EEX. The IFV disseminated during NYSE Arca Core Trading Session hours should not be viewed as an actual real time update of the NAV, because the NAV will be calculated only once at the end of each trading day based upon the relevant end of day values of the Trust's investments. Although the IFV will be disseminated throughout the Core Trading Session, the customary trading hours for EUAs are 2 a.m. to 12 p.m. Eastern Time. During the gap in time at the end of each trading day during which the Shares are traded on the Exchange, but real-time trading prices for EUAs are not available, the IFV will be calculated based on the end of day price of EUAs immediately preceding the trading session.

The IFV will be disseminated on a per Share basis every 15 seconds during regular NYSE Arca Core Trading Session.

Availability of Information

The NAV for the Trust's Shares will be disseminated daily to all market participants at the same time. The intraday, closing prices, and settlement prices for EUAs will be readily available from the applicable futures exchange websites, automated quotation systems, published or other public sources, or major market data vendors. The IFV per Share for the Shares will be disseminated by one or more major market data vendors on at least a 15 second delayed basis as required by NYSE Arca Rule 8.201–E(e)(2)(v).

Complete real-time data for EUAs and Daily EUA Futures is available by subscription through on-line information services. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The IFV will be available through on-line information services. The trading prices for EUAs and the daily EUA End of Day Index value and historical EUA End of Day Index values will be disseminated by on-line subscription services or by one or more major market data vendors during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. E.T. The EUA End of Day Index value is also published daily on the EEX website.

EEX also provides on its website, on a daily basis, transaction volumes and transaction prices for the EUA spot market. ICE Endex provides on its website, on a daily basis, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures that were traded outside of block trades by EUA futures brokers. In addition, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures traded in block trades by futures brokers are available on a daily basis through a subscription service to ICE Endex. However, ICE Endex provides the daily settlement price change of the Daily EUA Future on its website.

In addition, the Trust's website (*www.cotwoadvisors.com*) will contain the following information, on a per Share basis, for the Trust: (a) the prior business day's end of day closing NAV; (b) the Official Closing Price [21] or the midpoint of the national best bid and the national best offer (''NBBO'') as of the time the NAV is calculated (''Bid-Ask Price''); (c) calculation of the premium or discount of the Official Closing Price against the NAV expressed as a percentage of such NAV; (d) the prospectus; and (e) other applicable quantitative information. The Trust will also provide website disclosure of its EUA holdings before 9:30 a.m. E.T. on each trading day.

The Trust's website will be publicly available prior to the public offering of Shares and accessible at no charge. The website disclosure of the Trust's daily holdings will occur at the same time as the disclosure by the Trust of the daily holdings to Authorized Participants so that all market participants are provided daily holdings information at the same time. Therefore, the same holdings information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current daily holdings of the Trust through the Trust's website. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34–E (Early, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00, for which the MPV for order entry is $0.0001.

The Shares will conform to the initial and continued listing criteria under

[21] The term ''Official Closing Price'' is defined in NYSE Arca Rule 1.1(ll) as the reference price to determine the closing price in a security for purposes of Rule 7– E Equities Trading, and the procedures for determining the Official Closing Price are set forth in that rule.

NYSE Arca Rule 8.201–E. The trading of the Shares will be subject to NYSE Arca Rule 8.201–E(g), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Commodity-Based Trust Shares to facilitate surveillance. The Exchange represents that, for initial and continued listing, the Trust will be in compliance with Rule 10A–3 [22] under the Act, as provided by NYSE Arca Rule 5.3–E. A minimum of 10,000 Shares will be outstanding at the commencement of trading on the Exchange.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which conditions in the underlying carbon credit market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[23]

The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IFV, as described above. If the interruption to the dissemination of the IFV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority Inc. (''FINRA''), on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[24] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act. The Commission has explained that a proposal could satisfy the requirements of the Act in the first instance by demonstrating that the listing exchange has entered into a comprehensive surveillance-sharing agreement (''CSSA'') with a regulated ''market of significant size'' relating to the underlying assets.[25] The Commission has further stated that ''[c]onsistent with the discussion of 'significant market' . . . , the Commission has not previously, and does not now, require that [a] listing exchange be able to enter into a surveillance-sharing agreement with each regulated spot or derivatives market relating to an underlying asset, provided that the market or markets with which there is such an agreement constitute a 'significant market.' '' [26]

The Exchange has entered into a CSSA with ICE Endex. Pursuant to the CSSA, the Exchange will communicate as needed regarding trading in the Shares and Daily EUA Futures with ICE Endex, and the Exchange may obtain trading information regarding trading in the Shares and Daily EUA Futures from ICE Endex.

The Exchange believes that ICE Endex is a regulated [27] market of significant size related to EUAs and that it is reasonably likely that any bad actor trying to manipulate the price of the Trust would have to trade the Daily EUA Futures traded on ICE Endex. Therefore, ICE Endex is an appropriate market to surveil in order to detect and deter fraud and manipulation of EUAs. The term ''market of significant size'' includes a market as to which (a) there is a reasonable likelihood that a person attempting to manipulate the Trust Shares would also have to trade on that market to successfully manipulate the Trust Shares, and (b) it is unlikely that trading in the Trust Shares would be the predominant influence on prices in that market.

ICE Endex is the only market for trading Daily EUA Futures and it accounts for 95% of the trading volume for EUAs with ''daily expiry'' (which, as described above, includes spot EUAs and Daily EUA Futures). While the Trust will hold EUAs traded on EEX, this is economically equivalent to holding EUAs received after settling Daily EUA Futures that trade on ICE Endex. As described above, the correlation between the EUA End of Day Index value that reflects the value of the spot EUAs traded on EEX and the Daily EUA Future settlement price is nearly perfect. Thus, on any given day, the value of an EUA purchased on EEX or an EUA received after settling a Daily EUA Future traded on ICE Endex is the same.

Given the significant size of ICE Endex, there is a reasonable likelihood that a market participant attempting to manipulate the Trust Shares would also have to trade on ICE Endex to successfully manipulate the Trust Shares. While it is possible that a potential manipulator could chose to trade only in the spot EUA market

[22] With respect to the application of Rule 10A–3 (17 CFR 240.10A–3) under the Act, the Trust relies on the exemption contained in Rule 10A–3(c)(7).

[23] *See* NYSE Arca Rule 7.12–E.

[24] FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[25] *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, to Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and to List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E).

[26] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, to List and Trade Shares of the Winklevoss Bitcoin Trust).

[27] *See* note 13, *supra.*

(EEX), the near-perfect correlation between the EUA End of Day Index value and the Daily EUA Future settlement price means that a price distortion in the spot EUA market would be reflected in the Daily EUA Futures market and vice versa.[28]

It is unlikely that trading in the Trust Shares would be the predominant influence on Daily EUA Futures prices traded on ICE Endex for a number of reasons, including the significant volume in and size of the EUA daily expiry market. The total EUA market size is approximately €695.8 billion with approximately €64.1 billion of that attributable to the Daily EUA Futures market. The daily average trading volume for EUAs across the secondary market is approximately €2 billion, with approximately €264.8 million attributable to trading in the Daily EUA Futures market. The Trust has not yet launched and cannot predict its future inflows; however, given the size of the Daily EUA Futures market and the EUA market, as a whole, the Sponsor does not anticipate that the Trust will have available capital to buy and sell EUAs in an amount that would move the EUA market.

Based on the foregoing, the Exchange believes that prices on the Daily EUA Futures market (ICE Endex) can reasonably be relied upon to reflect the effects on the Daily EUA Futures market caused by a market participant attempting to manipulate the Trust Shares whether that attempt is made by directly trading on ICE Endex or indirectly by trading on the EUA spot market (EEX). In other words, to the extent that the price of Daily EUA Futures might be affected by trading in either the futures and spot markets, the price impact of potential fraud in either market would be reflected by a corresponding change to the price of the Daily EUA Futures Market (with which the Exchange has a CSSA).

The Exchange represents that all EUAs held by the Trust will be held and maintained in the Union Registry and that the Trust will not invest in futures, options, options on futures, or swap contracts. It is possible that EUAs and Daily EUA Futures may become listed on other exchanges that are members of ISG[29] or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange further represents that EEX is the principal market for all EUAs in which the Trust may invest, that the Exchange has a CSSA in place with ICE Endex, and that, because of the near-perfect correlation between the EUA End of Day Index value and the Daily EUA Future settlement price, the price impact of potential fraud in the spot market on EEX will be reflected in a corresponding change to the price of futures traded on ICE Endex.

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding accounts for trading in the Shares in connection with ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange.

The Trust has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (including noting that Shares are not individually redeemable); (2) NYSE Arca Rule 9.2–E(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IFV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the premium or discount on the Shares may widen as a result of reduced liquidity of EUAs during the Core and Late Trading Sessions; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the

[28] The Commission has granted several prior proposals to list and trade shares of physical commodity-based exchange-traded products, noting in every case that there was at least one regulated market of significant size for trading futures in the underlying commodity—whether gold, silver, platinum, palladium or copper—and the product's listing exchange has entered into surveillance-sharing agreements with, or held Intermarket Surveillance Group (''ISG'') membership in common with, that market. *See* Securities Exchange Act Release Nos. 61220 (December 22, 2009), 74 FR 68895, 68896 (December 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member; 61219 (December 22, 2009), 74 FR 68886, 68887–88 (December 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member; 62692 (August 11, 2010), 75 FR 50789, 50790 (August 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member; 62875 (September 9, 2010), 75 FR 56156, 56158 (September 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member; 63464 (December 8, 2010), 75 FR 77926, 77928 (December 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member; 68430 (December 13, 2012), 77 FR 75239, 75240–41 (December 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member; 71378 (January 23, 2014), 79 FR 4786, 4786–87 (January 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement.'').

[29] For a list of the current members of ISG, *see www.isgportal.org.*

commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses as will be described in the Registration Statement. The Information Bulletin will also reference the fact that last sale information regarding EUAs is subject to regulation by EEX and ICE Endex, that the Commission and the CFTC do not have jurisdiction over the trading of EUAs as a commodity, and that jurisdiction over the trading of EUAs is held by the relevant competent authority of the individual EU member states in which the trading takes place, namely the Bundesanstalt für Finanzdienstleistungsaufsicht (BaFIN) in Germany and the Autoriteit Financiële Markten (AFM) in the Netherlands.[30] The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Bulletin will also disclose the trading hours of the Shares and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Shares will be publicly available on the Trust's website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[31] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information regarding trading in the Shares and Daily EUA Futures from ICE Endex with which the Exchange has entered into a CSSA. The Exchange represents that all EUAs held by the Trust will be held and maintained in the Union Registry and that the Trust will not invest in futures, options, options on futures, or swap contracts. The Exchange further represents that EEX is the principal market for all EUAs in which the Trust may invest, and that the Exchange can monitor those EUAs through its CSSA with ICE Endex.[32]

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of information on EUAs and Daily EUA Futures available on public websites and through professional and subscription services. The trading prices for EUAs and the daily EUA End of Day Index value and historical EUA End of Day Index values will be disseminated by on-line subscription services or by one or more major market data vendors during the NYSE Arca Core Trading Session. The daily EUA End of Day Index value is also published on the EEX website. EEX also provides on its website, on a daily basis, transaction volumes and transaction prices for the EUA spot market. Additionally, ICE Endex provides on its website, on a daily basis, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures that were traded outside of block trades by EUA futures brokers. In addition, transaction volumes, transaction prices, daily settlement prices and historical settlement prices for Daily EUA Futures traded in block trades by futures brokers are available on a daily basis through a subscription service to ICE Endex. ICE Endex also provides the daily settlement price change of the Daily EUA Future on its website.

In addition, the Trust's website (*www.cotwoadvisors.com*) will provide pricing information for EUAs and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The NAV of the Trust will be published on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IFV relating to the Shares will be widely disseminated by one or more major market data vendors at least once every 15 seconds as required by NYSE Arca Rule 8.201–E(e)(2)(v). The Trust's website will also provide its prospectus and other relevant quantitative information regarding the Shares. The Trust will also provide website disclosure of its EUA holdings before 9:30 a.m. E.T. on each trading day. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information regarding trading in the Shares, EUAs and Daily EUA Futures via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA.

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 believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical carbon credits.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[30] Article 22 of Regulation (EU) No. 596/2014 on market abuse (market abuse regulation) (''MAR'') requires each EU member state to designate a single administrative competent authority to ensure that the provisions of MAR are applied on its territory. Commission Regulation 596/2014, 2014 O.J. (L 173) 42. For a list of the competent authorities for each EU Member State. *See https://www.esma.europa.eu/sites/default/files/mar.pdf.*

[31] 15 U.S.C. 78f(b)(5).

[32] *See* the discussion in the ''Surveillance'' section, *supra.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–NYSEARCA–2024–05 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NYSEARCA–2024–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–05 and should be submitted on or before February 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01511 Filed 1–25–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99411; File No. SR–IEX–2024–03]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Two Aspects of its Recent Post Only Filing and to Correct One Nonsubstantive Typographical Error Introduced in the Post Only Filing

January 22, 2024.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 16, 2024, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 the Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) under the Securities Exchange Act of 1934 (''Act''),[4] and Rule 19b–4 thereunder,[5] Investors Exchange LLC (''IEX'' or ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to clarify two aspects of its recent Post Only Filing[6] and to correct one nonsubstantive typographical error introduced in the Post Only Filing. The Exchange has designated this rule change as ''non-controversial'' under section 19(b)(3)(A) of the Act[7] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[8]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 recently filed a rule change to introduce a Post Only[9] order parameter instruction and a related Trade Now[10] order instruction.[11] The Post Only Filing was effective on filing, and IEX expects to implement the new functionality in February 2024.[12] IEX will issue a Trading Alert at least ten (10) days in advance of the implementation date.[13]

The Exchange is making this filing to clarify two aspects of the Post Only Filing and to correct one nonsubstantive typographical error introduced in the Post Only Filing. First, IEX proposes to amend IEX Rule 11.190(a)(1)(H), which currently states that a non-displayed limit order ''May include a Trade Now instruction. . .,'' to replace the word

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* Securities Exchange Act Release No. 98988 (November 20, 2023), 88 FR 82926 (November 27, 2023) (SR–IEX–2023–13) (''Post Only Filing'').

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4.

[9] *See* IEX Rule 11.190(b)(20).

[10] *See* IEX Rule 11.190(b)(21).

[11] *See* supra note 6.

[12] *See* IEX Trading Alert # 2024–002, available at *https://iextrading.com/alerts/#/238.*

[13] *See* supra note 6.

''May'' with ''Will'' to reflect that all non-displayed limit orders will include a Trade Now instruction. This proposed change is consistent with the Post Only Filing, which states that ''non-displayed limit orders (including non-displayed portions of reserve orders and non-displayed Discretionary Limit orders) would always include a Trade Now order instruction. . . .'' [14] The proposed change is also consistent with provisions in IEX Rules 11.190(b)(2)(J) and 11.190(b)(7)(F)(xi),[15] which provide that non-displayed portions of reserve orders and Discretionary Limit orders, respectively, ''will include a Trade Now instruction. . . .'' IEX thus proposes to specify that all non-displayed limit orders will always include a Trade Now instruction.

Second, IEX proposes to clarify that regular limit orders with the Post Only order instruction are eligible to trade in the Pre-Market Hours [16] and Post-Market Hours [17], depending upon their order's Time-in-Force (''TIF'').[18] IEX's Post Only order instruction may only be applied to limit orders with a TIF of DAY, GTX, SYS, or GTT.[19] However, although the Post Only Filing states that ''Post Only orders must have a [TIF] of DAY, GTX, SYS, or GTT because they will only trade during Regular Market Hours'',[20] regular limit orders with the Post Only order instruction and a TIF of GTT or SYS can also trade during the Pre-Market and Post-Market Hours, while regular limit orders with the Post Only order instruction and a TIF of GTX can also trade during the Post-Market Hours. Accordingly, IEX proposes to clarify in this rule change proposal that the phrase ''because they will only trade during Regular Market Hours'' in the Post Only Filing was inaccurately underinclusive, and the TIFs apply as set forth in IEX Rule 11.190(b)(20).

Finally, IEX proposes to amend IEX Rule 11.190(b)(7)(F) to correct a nonsubstantive typographical error introduced in the Post Only Filing. Specifically, the Post Only Filing added two new subparagraphs to IEX Rule 11.190(b)(7)(F), which it labeled ''(x)'' and ''(ix).'' IEX proposes to modify the label on the second new subparagraph to change it from (''ix'') to instead be (''xi''), which is the next sequential number.[21]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[22] in general, and furthers the objectives of section 6(b)(5),[23] in particular, in that it would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to enforce compliance by the Exchange's Members [24] and the public with the provisions of the rules of the Exchange. In particular, the Exchange believes that the proposed rule change will provide greater clarity to Members and the public regarding the Exchange's rules by clarifying that: (i) all non-displayed limit orders will always include a Trade Now instruction; (ii) regular displayed limit orders with a Post Only order instruction may trade in the Pre-Market and Post-Market Hours if permitted by their TIFs; and (iii) the newly-added subparagraph (ix) of IEX Rule 11.190(b)(7)(F) should be renumbered to be subparagraph (xi).

This rule filing does not propose any substantive changes to the functionality of the Post Only and Trade Now order instructions, but rather simply clarifies the functionality introduced in the Post Only Filing and removes the inconsistencies described in the Purpose section. Therefore, the Exchange does not believe that these proposed changes raise any new or novel issues not already considered by the Commission. IEX also believes that the proposed rule change is nondiscriminatory since all Members are eligible to enter orders with Post Only and/or Trade Now instructions, and these changes will provide the same additional clarity to all Members.

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. As described in the Purpose and Statutory Basis sections, this rule filing merely proposes to clarify which orders will always include a Trade Now instruction and the trading hours during which Post Only orders can trade, as well as to correct one nonsubstantive typographical error introduced in the Post Only Filing. This proposal would not make any substantive changes to the IEX's new Post Only and Trade Now functionality and is not designed to address any competitive issues. Because the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

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 [25] and Rule 19b–4(f)(6) thereunder.[26]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [27] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [28] permits the Commission to 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 be operative concurrent with IEX's planned implementation of the Post Only Filing in February 2024. The Exchange states that the proposal clarifies the applicable trading sessions and Trade Now functionality as it applies to the Post Only order type and corrects one nonsubstantive typographical error concerning subparagraph numbering in the rule text. Additionally, the Exchange states that waiver of the operative delay

[14] *See* Post Only Filing, 88 FR 82926, 82927.

[15] As described below, IEX Rule 11.190(b)(7)(F)(xi) was erroneously numbered 11.190(b)(7)(F)(ix); this rule filing corrects the numbering of the subparagraph.

[16] *See* IEX Rule 1.160(z).

[17] *See* IEX Rule 1.160(aa).

[18] *See* IEX Rule 11.190(c).

[19] *See* IEX Rule 11.190(b)(20)(E).

[20] *See* Post Only Filing, 88 FR 82926, 82927.

[21] This rule change will not impact the pre-existing IEX Rule 11.190(b)(7)(F)(ix), which will continue to read ''Discretionary Limit orders are subject to the Price Sliding provisions of IEX Rule 11.190(h).''

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] *See* IEX Rule 1.160(s).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 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.

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

would allow these clarifying changes to take effect concurrent with the implementation of the Post Only and Trade Now functionality, which will benefit all market participants who submit either Post Only or Trade Now-eligible orders to the Exchange. Because the proposal raises no novel regulatory issues and makes only clarifying changes, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[29]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–IEX–2024–03 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–IEX–2024–03. 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–IEX–2024–03 and should be submitted on or before February 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01512 Filed 1–25–24; 8:45 am]

BILLING CODE 8011–01–P

[29] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99406; File No. SR–NYSE–2024–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

January 22, 2024.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 12, 2024, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to (1) offer credits to member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00; (2) modify the requirements and charges for D Orders above the first 750,000 average daily volume (''ADV'') of aggregate executions at the close last modified in the last 3 minutes before the scheduled close of trading and make a non-substantive conforming change in the same section of the Price List; (3) offer additional monthly rebates and incentives for Designated Market Maker (''DMM'') units with 150 or fewer assigned securities; (4) eliminate underutilized fees for transactions designated with a Retail Modifier as defined in Rule 13 (''Retail Modifier''); and (5) modify the rates for routing to NYSE American LLC in Tape B and C securities below $1.00. The Exchange proposes to implement the rule change on January 12, 2024. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List to (1) offer credits to member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00; (2) modify the requirements and charges for D orders above the first

750,000 ADV of aggregate executions at the close last modified in the last 3 minutes before the scheduled close of trading and make a non-substantive conforming change in the same section of the Price List; (3) offer an additional monthly rebate and incentive for DMM units with 150 or fewer assigned securities; (4) eliminate underutilized fees for transactions designated with a Retail Modifier; and (5) modify the rates for routing to NYSE American LLC (''NYSE American'') in Tape B and C securities below $1.00.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional liquidity to the Exchange, including an additional incentive to smaller DMM units to increase quoting on the Exchange.

The Exchange proposes to implement the rule change on January 12, 2024.[4]

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [6] Indeed, cash equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

In response to this competitive environment, the Exchange has established incentives for member organizations who submit orders that provide liquidity on the Exchange. The Exchange has also established incentives for DMM units to quote at specified levels. The proposed fee change is designed to encourage market maker quoting by offering additional incentives to smaller DMM units to increase quoting on the Exchange.

Proposed Rule Change

The Exchange proposes to offer credits to member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00. The Exchange also proposes to modify the requirements and charges for D Orders above the first 750,000 ADV of aggregate executions at the close last modified in the last 3 minutes before the scheduled close of trading and to provide an additional monthly rebate and incentive for DMM units with 150 or fewer assigned securities based on time at the National Best Bid (''NBB'') and National Best Offer (''NBO,'' together the ''NBBO'') in the applicable security in the applicable month. The Exchange further proposes to eliminate underutilized fees for transactions designated with a Retail Modifier as defined as defined in Rule 13 and to make non-substantive conforming changes. Finally, the Exchange proposes to modify the rates for routing to NYSE American in securities below $1.00 to 0.08% of total dollar value of the transaction.

Credits for Non-Displayed Limit Orders

The Exchange currently provides a $0.0010 credit to member organizations that send orders that add liquidity to the Exchange in Non-Displayed Limit Orders and that have Adding ADV [11] in Non-Displayed Limit Orders that is at least 0.12% of Tapes A, B, and C CADV combined, excluding any liquidity added by a DMM. The Exchange proposes that member organizations sending orders that add liquidity to the Exchange in Non-Displayed Limit Orders and that have Adding ADV in Non-Displayed Limit Orders that is at least 0.12% of Tapes A, B, and C CADV combined, excluding any liquidity added by a DMM, would also be eligible for a credit equal to 0.10% of the total dollar value of the transaction for securities with a per share stock price below $1.00. In addition, the Exchange proposes to designate this credit as ''Non Display Tier 2.''

Similarly, the Exchange currently provides a $0.0018 credit to member organizations that send orders that add liquidity to the Exchange in Non-Displayed Limit Orders and that have Adding ADV in Non-Displayed Limit Orders that is at least 0.15% of Tapes A, B, and C CADV combined, excluding any liquidity added by a DMM. The Exchange proposes that member organizations sending orders that add liquidity to the Exchange in Non-Displayed Limit Orders and that have Adding ADV in Non-Displayed Limit Orders that is at least 0.15% of Tapes A, B, and C CADV combined, excluding any liquidity added by a DMM, would also be eligible for a credit equal to 0.18% of the total dollar value of the transaction for securities with a per share stock price below $1.00. In

[4] The Exchange originally filed to amend the Price List on January 2, 2024 (SR–NYSE–2024–01). SR–NYSE–2024–01 was withdrawn on January 12, 2024 and replaced by this filing.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

[11] Footnote 2 to the Price List defines ADV as ''average daily volume'' and ''Adding ADV'' as ADV that adds liquidity to the Exchange during the billing month.

addition, the Exchange proposes to designate this credit as ''Non Display Tier 1.''

In addition, as described more fully below, member organizations operating a DMM unit would be eligible for Non Display Tier 1 and 2 credits for Non Display Limit Order volume sent to the Exchange on all Tapes when the DMM unit meets the incentive quoting requirements described in the Small DMM Incentive section of the Price List.

The following example demonstrates operation of the Non Display Tier credits as modified by the proposal.

Assume Member Organization A has Adding ADV in Non-Displayed Limit Orders of 14 million shares in Tape A, B and C securities, in a month where Tape A, B and C CADV is a combined 10 billion shares. Member Organization A would thus have Adding ADV in Non-Displayed Limit Orders of 0.14% of Tapes A, B, and C CADV combined, and would qualify for the credits under Non Display Tier 2 for the qualifying 14 million shares of Non-Displayed Limit Orders. Further, assume that 4 million of Member Organization A's 14 million Adding ADV was in securities with a per share stock price below $1.00. As a result, that 4 million Adding ADV would receive a credit equal to 0.10% of the total dollar value of the transaction, and the remaining 10 million ADV would receive a credit of $0.0010 per share for securities with a per share stock price of $1.00 or more.

The purpose of the proposed changes to credits for non-displayed orders is to incentivize member organizations to increase the liquidity-providing Non-Displayed Limit Orders in the Tapes A, B and C securities with a per share stock price below $1.00 that they send to the Exchange, which would improve liquidity on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the credit to the level of orders sent by a member organization that adds non-displayed liquidity, the Exchange's fee structure would incentivize member organizations to submit more of those orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to other incoming marketable orders. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. There are currently 1–2 member organizations that could qualify for the proposed credits based on their current trading profile on the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new credit in sub-dollar securities.

D Orders at the Close

Currently, the Exchange does not charge member organizations for the first 750,000 ADV of the aggregate of executions at the close for D Orders, Floor broker executions swept into the close, including verbal interest, and executions at the close, excluding market at-the-close (''MOC'') Orders, limit at-the-close (''LOC'') Orders and Closing Offset (''CO'') Orders. In 2020, the ability of Floor brokers to represent verbal interest intended for the Closing Auction was eliminated.[12] The Exchange accordingly proposes to delete the phrase ''including verbal interest'' from this section of the Price List as obsolete.

Further, the Exchange currently charges certain fees differentiated by time of entry (or last modification) for D Orders at the close after the first 750,000 ADV of aggregate of executions at the close by a member organization. Specifically, the Exchange currently charges $0.0008 per share for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for firms in MOC/LOC Tiers 1 and 2, both with Adding ADV of at least 0.50% of Tape A CADV; all other firms are charged $0.0010 per share.

The Exchange proposes to add an alternative way to qualify for the $0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading. As proposed, member organizations in MOC/LOC Tiers 1, 2 or 3 that have Adding ADV of at least 1.05% of Tape A CADV would also be eligible for the $0.0008 per share fee.

In addition, the Exchange proposes a new fee of $0.0009 for executed D Orders last modified in the last 3 minutes before the scheduled close of trading for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV.

All other member organizations with executed D Orders last modified in the last 3 minutes before the scheduled close of trading would continue to be charged the current rate of $0.0010.

The purpose of this change is to continue to encourage additional liquidity provision on the Exchange both during the trading day and in the Closing Auction. The Exchange believes that it is reasonable to offer member organizations in MOC/LOC Tiers 1, 2 and 3 2 differentiated fees based on the percentage of Adding ADV of Tape A CADV because it would encourage member organizations to direct their liquidity-providing orders in Tape A securities to the Exchange, as well as encourage greater marketable and other liquidity at the closing auction. The Exchange believes that providing an alternative way for member organizations to qualify for lower fees for executed D Orders last modified in the last 3 minutes before the scheduled close of trading as proposed will allow a greater number of member organizations to qualify for the lower fees, and will incentivize more member organizations to send adding liquidity to the Exchange, which in turn supports the quality of price discovery on the Exchange.

Small DMM Incentive

The Exchange currently pays DMM units with 150 or fewer assigned securities a monthly rebate based on the number of assigned securities and time at the NBBO in the applicable security in the applicable month. The rebate is payable for each security assigned to such a DMM in the previous month (regardless of whether the stock price exceeds $1.00) for which that DMM provides quotes at the NBBO at least 15% of the time in the applicable month, defined in the Price List as the ''Incentive Quoting Requirement'').[13] This monthly rebate is in addition to the rate on transactions and is be prorated to the number of trading days in a month that an eligible security is assigned to a DMM.

The Exchange propose an additional monthly rebate for DMM units with 150 or fewer assigned securities in the previous month for assigned securities payable per symbol in securities where qualified DMMs quote at the NBBO 25% of the time. The new proposed incentive quoting requirement would be defined

[12] *See* Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40885 (July 29, 2021) (SR–NYSE–2020–95) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2, To Make Permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and To Make Related Changes to Rules 7.32, 7.35C, 46B, and 47).

[13] For purposes of the Price List, DMM NBBO Quoting means DMM quoting at the NBBO. *See* NYSE Price List, General, third bullet, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.* Time at the NBBO or ''inside'' is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside. Reserve or other non-displayed orders entered by the DMM are not included in the inside quote calculations.

in the Price List as ''Incentive Quoting Requirement 2'' and the current incentive quoting requirement would be re-named ''Incentive Quoting Requirement 1.'' Conforming changes would also be made to the Price List. In addition, the Exchange would delete ''at least'' before ''15% of the time'' in the current incentive quoting requirement as unnecessary in light of the proposed incentives for quoting at the NBBO 25% of the time. In addition, the Exchange proposes an alternative way for member organizations that operate DMM units of a certain size to qualify for the Non-Display Tiers described above as modified by this proposal.

As proposed, a DMM unit that has at least 1 and not more than 24 assigned securities that meets proposed Incentive Quoting Requirement 2 would be eligible for a monthly rebate of $250 per qualifying symbol.

A DMM unit that has a least 25 and no more than 74 assigned securities that meets Incentive Quoting Requirement 1 or 2 would be eligible for a monthly rebate of $1,250 per symbol that qualifies for Incentive Quoting Requirement 2, instead of the current $500 per symbol credit, and symbols qualifying for Incentive Quoting Requirement 1 would receive $500 per symbol credit. In addition, the Exchange proposes that a member organization that operates a DMM unit that has a least 25 and no more than 74 assigned securities meeting these requirements would qualify for proposed ''Non Display Tier 2'' as described above.

Finally, a DMM unit that has at least 75 but no more than 150 assigned securities that meets Incentive Quoting Requirement 1 or 2 would be eligible for a monthly rebate of $1,500 per symbol that qualifies for Incentive Quoting Requirement 2, instead of the current $1,000 per symbol credit, and symbols qualifying for Incentive Quoting Requirement 1 would receive $1,000 per symbol credit. In addition, the Exchange proposes that such that a member organization that operates a DMM unit that has a least 75 and no more than 150 assigned securities meeting these requirements would be eligible for proposed ''Non Display Tier 1'' as described above.

For example, assume DMM unit A has 35 assigned securities. Further assume the DMM quotes at the NBBO 25% of the time in 30 of those assigned securities and quotes at the NBBO 15% of the time in the remaining 5 assigned securities. For a billable month in those 30 assigned securities that meet the Incentive Quoting Requirement 2, DMM unit A would receive a per qualified symbol credit of $1,250, with a total combined credit of $37,500 (30 securities × $1,250). In addition, for the billable month in the 5 assigned securities that meet current Incentive Quoting Requirement 1, DMM unit A would receive a per qualified symbol credit of $500, with a total combined credit of $2,500 (5 securities × $500). In addition, the member organization operating such a qualifying DMM unit A would be eligible for a $0.0010 credit and the proposed credit equivalent to 0.10% of the total dollar value of the transaction for securities with a per share stock price below $1.00 under Non Display Tier 2 credits for that member organization's Non Display Limit Order volume in all Tapes.

The proposed rule change is designed to provide smaller market makers (*i.e.,* DMM units with 150 or fewer assigned securities) with an added incentive to quote in their assigned securities at the NBBO at least 25% of the time in a given month and increase SLP displayed adding volume. As described above, member organizations have a choice of where to send order flow. The Exchange believes that incentivizing DMM units on the Exchange to quote at the NBBO more frequently could attract additional orders to the Exchange and contribute to price discovery which benefits all market participants. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

Moreover, the Exchange believes the proposed change could have the added benefit of attracting additional DMM units to the Exchange by providing an incentive for member organizations that operate a DMM unit to qualify for the Non-Display Tiers rates as modified by this proposal. The Exchange believes that eligibility for the Non Display Tier rates for member organizations that operate a DMM unit with a certain number of registrations that meet the incentive quoting requirements is not unfairly discriminatory because member organizations that do not operate a DMM unit can still qualify for the Non-Display Tiers rates by sending adding liquidity to the Exchange and meeting the ADV requirements set out in the Price List.

Currently, the Exchange has three DMM units, only one of which has fewer than 150 assigned securities and therefore could qualify for the rebate.[14] The Exchange cannot predict with certainty whether and how many member organizations would avail themselves of the opportunity to become an Exchange DMM unit and qualify for the proposed tiers. However, the Exchange believes that the proposed additional rebate for higher quoting in assigned securities, along with the proposed rebate for adding non-displayed liquidity for member organizations that operate a qualifying DMM unit, could incentivize additional firms to become DMM units on the Exchange by increasing incentives for new and smaller entrants. The Exchange notes that the small DMM incentive currently includes an incentive for non-DMM adding liquidity (*e.g.,* SLP Minimum Add Credit).

Deletion of Underutilized Fees for Orders With a Retail Modifier

In May 2021, the Exchange introduced a fee of $0.0005 for executions at the open designated with a Retail Modifier as defined in Rule 13.1.[15] In addition, the Exchange introduced a $0.0008 fee per share for MOC and LOC Orders with a Retail Modifier, unless a lower tiered fee applies.[16] The purpose of the change was to incentivize member organizations to submit additional displayed retail liquidity to the Exchange.

The Exchange proposes to eliminate and remove both fees per share and the associated requirements. The fees have been underutilized by member organizations insofar as they have not encouraged member organizations to increase their retail liquidity volume in response to these lower fees as the Exchange had anticipated it would since the fees were adopted. The Exchange does not anticipate that any additional member organization in the near future would increase their retail liquidity volume in response to either fee that is the subject of this proposed rule change.

Routing Fees to NYSE American for Tape B and C Securities Below $1.00

Currently, the Exchange charges a fee of $0.0005 per share for executions in securities with a price below $1.00 that route to and execute in an NYSE American auction and 0.30% of total dollar value of the transaction for all

[14] In contrast, there are 14 competing Lead Market Makers on NYSE Arca, Inc. (''NYSE Arca''). *See https://www.nyse.com/markets/nyse-arca/membership.*

[15] As Rule 13 makes clear, orders with a ''retail'' modifier are separate and distinct from a ''Retail Order'' under Rule 7.44. The Exchange proposes to relocate the definition of Retail Modifier to the section of the Price List setting forth the fee for MPL orders that remove liquidity from the NYSE immediately following the section setting forth the rates for executions at the close.

[16] *See* Securities Exchange Act Release No. 91948 (May 20, 2021), 86 FR 28399 (May 26, 2021) (SR–NYSE–2021–33).

other orders routed to and executed on NYSE American (*i.e.,* non-auction).

The Exchange proposes to charge a fee equivalent to 0.08% of total dollar value of the transaction for all orders in securities below $1.00 that route to NYSE American (*i.e.,* both auction and non-auction).[17] The proposed fee is intended to simplify the Price List by charging one rate for both types of executions routed to NYSE American. The Exchange notes that the fee of 0.008% is at or lower than other routing fees charged by other Exchanges for securities with a price below $1.00.[18]

The proposed change is not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[19] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[20] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by member organizations by aligning incentives for trading both on the close and intraday, which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange, both intraday and during the closing auction.

Credits for Non-Displayed Limit Orders

As described above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide liquidity on the Exchange, member organizations can choose from any one of currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange fees that relate to providing incentives for such order flow. Given this competitive environment, the proposal to offer tiered credits for member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00 equal to a percentage of the total dollar value of the transaction for those securities is a reasonable means to improve opportunities for price improvement, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants.

D Orders at the Close

The Exchange believes that charging different rates for D Orders that execute in the close based on time of entry or last modification encourages all member organizations to enter or modify d-Quotes as early possible, beginning with as early as 25 minutes before the close of trading, in order to build up liquidity going into the closing auction. Further, it is reasonable to charge member organizations a higher rate for entering or modifying their interest in the final minutes of regular trading hours because such interest most benefits from the flexibility afforded the order type.

The Exchange believes that offering an alternative way to qualify for the $0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of $0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is reasonable because the proposed change would encourage greater marketable and other liquidity at the closing auction, and encourage better liquidity and price discovery during the trading day.

Small DMM Incentive

The Exchange believes that offering DMMs with 150 or fewer assigned securities an additional monthly rebate for assigned securities payable per symbol in securities where qualified DMMs quote at the NBBO 25% of the time, as well as making them eligible for the Non Display Tier 1 and 2 is a reasonable means to improve market quality, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants. The Exchange notes that the proposal would also foster liquidity provision and stability in the marketplace and further reduce smaller DMM's reliance on transaction fees. The proposal would also reward DMM units, who have greater risks and heightened quoting and other obligations than other market participants. The proposed change is also a reasonable attempt to potentially attract additional DMM units to the Exchange by providing additional financial incentives for smaller firms to become DMM units.

Deletion of Underutilized Fees for Orders With a Retail Modifier

The Exchange believes that the proposed elimination of the underutilized fees for orders designated with a Retail Modifier is reasonable because member organizations have underutilized these fees. As noted, the fees have been underutilized by member organizations insofar as they have not encouraged member organizations to increase their retail liquidity in response to these lower fees as the Exchange had anticipated it would since they were adopted . The Exchange does not anticipate that any additional member organization in the near future would increase their retail liquidity in response to either fee that is the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate fees when such incentives become underutilized. The Exchange also believes eliminating underutilized incentives would add clarity and transparency to the Price List.

[17] The Exchange would also add a missing period at the end of the preceding full paragraph after the word ''combined.''

[18] For example, NYSE Arca charges a routing fee of 0.35% of the dollar value of the transaction for securities below $1.00. *See https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf,* at 3.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) & (5).

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

Routing Fees to NYSE American for Tape B and C Securities Below $1.00

The Exchange believes that its proposed routing fee of 0.08% of total dollar value of the transaction for orders that route to NYSE American is reasonable because the fee would be comparable to the current fee of $0.0005 per share for orders that route to the Exchange's affiliate NYSE American. Moreover, the proposed fee would be consistent with or lower than fees charged on other exchanges.[22] The Exchange notes that operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

Credits for Non-Displayed Limit Orders

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. The Exchange believes that the proposed tiered credits for member organizations adding non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00 is equitable because the proposed credits would create incentives for adding greater liquidity and providing price improvement. The Exchange believes the proposed rule change would attract more liquidity to the Exchange, thereby improving market-wide liquidity.

D Orders at the Close

The Exchange believes that offering an alternative way to qualify for the $0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of $0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction. Moreover, the proposed fees are equitable because all similarly situated member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

Small DMM Incentive

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace and reducing smaller DMM's reliance on transaction fees. Moreover, the proposal is an equitable allocation of fees because it would reward DMM units for their increased risks and heightened quoting and other obligations. As such, it is equitable to offer smaller DMM units an additional flat, per security credit for orders that add liquidity. The proposed rebate is also equitable because it would apply equally to any DMM unit of a certain size. In addition, the proposed alternative way for member organizations that operate a DMM unit to qualify for the Non Display Tier rebates is equitable because a member organization that would not qualify for the rebates operation of a DMM unit with a certain number of registrations that meet the incentive quoting requirements would have the ability to qualify for the rebates based on adding volume in Non-Displayed Limit Orders in Tapes A, B and C as set forth under the modified qualification criteria.

The Exchange notes that at this time there is currently only one DMM unit that could qualify for the proposed rebate based on its number of assigned securities. The Exchange believes that the proposal would provide an equal incentive to any member organization to maintain a DMM unit, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebate.

Deletion of Underutilized Fees for Orders With a Retail Modifier

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized fees the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of the underutilized fees would apply to all similarly-situated member organizations that send orders, including MOC and LOC orders, to the Exchange with a Retail Modifier on an equal basis. All such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

Routing Fees to NYSE American for Tape B and C Securities Below $1.00

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all member organizations that route orders in securities below $1.00 to NYSE American, and each such member organization would be charged the proposed fee when utilizing the functionality. Without having a view of member organizations' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any member organization from reducing or discontinuing its use of the routing functionality. Moreover, the proposed fee would be equitable because it is consistent with or lower than fees charged on other exchanges.[23]

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Credits for Non-Displayed Limit Orders

The Exchange believes that offering the proposed credits to member organizations based on the amount of liquidity provided to the Exchange in non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00 would provide a further incentive for all member organizations to provide additional liquidity to the Exchange.

D Orders at the Close

The Exchange believes that offering an alternative way to qualify for the lower $0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of $0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction. The Exchange

[22] *See* note 17, *supra.*

[23] *See* note 17, *supra.*

believes that the proposal is not unfairly discriminatory because all similarly situated member organizations that submit D Orders last modified in the last 3 minutes before the scheduled close of trading above the first 750,000 ADV of the aggregate of executions at the close by a member organization will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

Small DMM Incentive

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. For example, member organizations could display quotes on competing exchanges rather than quoting sufficiently on the Exchange to meet the proposed 25% NBBO quoting requirement. The Exchange believes that offering an additional rebate for DMM units with 150 or fewer assigned securities in the previous month would provide a further incentive for smaller DMM units to quote and trade their assigned securities on the Exchange, and will generally allow the Exchange and DMM units to better compete for order flow, thus enhancing competition. The Exchange also believes that the requirement of 150 or fewer assigned securities to qualify for the credit is not unfairly discriminatory because it would apply equally to all existing and prospective member organizations with 150 or fewer assigned securities that choose to maintain a DMM unit on the Exchange. The Exchange does not believe that it is unfairly discriminatory to offer incentives based on a maximum threshold. The Exchange notes that it currently offers incentives that apply equally to all member organizations that cannot or choose not to exceed a certain volume threshold.[24] The Exchange believes that the proposal would provide an equal incentive to any member organization to operate and maintain a DMM unit, and that the proposal would not be unfairly discriminatory because the threshold-based incentive would be offered on equal terms to all similarly situated member organizations. Similarly, the proposal does not permit unfair discrimination because the proposed alternative way for member organizations that operate a DMM unit to qualify for the Non Display Tier rebates would be applied to all similarly situated member organizations, who would all be eligible for the same credits on an equal basis. Member organizations could qualify the Non Display Tier rebates either by operating a DMM unit that meets the existing and proposed incentive quoting requirements at the NBBO or meeting the requirements of the Non Display Tiers as modified by this proposal. In both cases, the proposal does not permit unfair discrimination because the proposed criteria apply equally to all similarly situated member organizations, and all member organizations eligible for the rebates under either criteria would be eligible for the same credits on an equal and non-discriminatory basis. Moreover, the Exchange does not believe that offering a lower remove fee to member organizations that operate a DMM unit and meet Adding ADV requirements would be unfairly discriminatory given that member organizations operating a DMM unit have greater risks and heightened quoting and other obligations than other market participants. As such, it is equitable and not unfairly discriminatory to offer member organizations operating a DMM unit that also meet incentive quoting requirements the ability to receive the Non Display Tier rebates as other member organizations that do not operate a DMM unit and thus do not have the same quoting and trading obligations as DMM units. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Deletion of Underutilized Fees for Orders With a Retail Modifier

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the underutilized fees would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating fees that are underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of an underutilized fee would make the Price List more accessible and transparent.

Routing Fees to NYSE American for Tape B and C Securities Below $1.00

The Exchange believes its proposed routing fee is not unfairly discriminatory because the fee would be applicable to all member organizations on an equal and non-discriminatory basis.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all member organizations that route orders in securities below $1.00 to NYSE American. Moreover, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated member organizations. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among member organizations because the ability to route to NYSE American would remain available to all member organizations on an equal basis and each such participant would be charged the same fee for using the functionality.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[25] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[26] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed

[24] For instance, as noted above, the first 750,000 ADV of the aggregate of executions at the close by a member organization are not charged. *See* NYSE Price List, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf*.

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(4) & (5).

to attract higher volumes of orders transacted on the Exchange by member organizations by aligning incentives for trading both on the close and intraday, which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange, both intraday and during the closing auction.

Credits for Non-Displayed Limit Orders

As described above, the Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide liquidity on the Exchange, member organizations can choose from any one of currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange fees that relate to providing incentives for such order flow. Given this competitive environment, the proposal to offer tiered credits for member organizations providing non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00 equal to a percentage of the total dollar value of the transaction for those securities is a reasonable means to improve opportunities for price improvement, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants.

D Orders at the Close

The Exchange believes that charging different rates for D Orders that execute in the close based on time of entry or last modification encourages all member organizations to enter or modify d-Quotes as early possible, beginning with as early as 25 minutes before the close of trading, in order to build up liquidity going into the closing auction. Further, it is reasonable to charge member organizations a higher rate for entering or modifying their interest in the final minutes of regular trading hours because such interest most benefits from the flexibility afforded the order type.

The Exchange believes that offering an alternative way to qualify for the $0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of $0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is reasonable because the proposed change would encourage greater marketable and other liquidity at the closing auction, and encourage better liquidity and price discovery during the trading day.

Small DMM Incentive

The Exchange believes that offering DMMs with 150 or fewer assigned securities an additional monthly rebate for assigned securities payable per symbol in securities where qualified DMMs quote at the NBBO 25% of the time, as well as making them eligible for the Non Display Tier 1 and 2 is a reasonable means to improve market quality, attract additional order flow to a public market, and enhance execution opportunities for member organizations on the Exchange, to the benefit of all market participants. The Exchange notes that the proposal would also foster liquidity provision and stability in the marketplace and further reduce smaller DMM's reliance on transaction fees. The proposal would also reward DMM units, who have greater risks and heightened quoting and other obligations than other market participants. The proposed change is also a reasonable attempt to potentially attract additional DMM units to the Exchange by providing additional financial incentives for smaller firms to become DMM units.

Deletion of Underutilized Fees for Orders With a Retail Modifier

The Exchange believes that the proposed elimination of the underutilized fees for orders designated with a Retail Modifier is reasonable because member organizations have underutilized these fees. As noted, the fees have been underutilized by member organizations insofar as they have not encouraged member organizations to increase their retail liquidity in response to these lower fees as the Exchange had anticipated it would since they were adopted. The Exchange does not anticipate that any additional member organization in the near future would increase their retail liquidity in response to either fee that is the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate fees when such incentives become underutilized. The Exchange also believes eliminating underutilized incentives would add clarity and transparency to the Price List.

Routing Fees to NYSE American for Tape B and C Securities Below $1.00

The Exchange believes that its proposed routing fee of 0.08% of total dollar value of the transaction for orders that route to NYSE American is reasonable because the fee would be comparable to the current fee of $0.0005 per share for orders that route to the Exchange's affiliate NYSE American. Moreover, the proposed fee would be consistent with or lower than fees charged on other exchanges.[28] The Exchange notes that operates in a highly competitive market in which market participants can readily select between various providers of routing services with different product offerings and different pricing.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for the proposed credits and fees on an equal basis. The Exchange believes its proposal equitably allocates its fees and credits among its market participants by fostering liquidity provision and stability in the marketplace.

Credits for Non-Displayed Limit Orders

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. The Exchange believes that the proposed tiered credits for member organizations adding non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00 is equitable because the proposed credits would create incentives for adding greater liquidity and providing price improvement. The Exchange believes the proposed rule change would attract more liquidity to the Exchange, thereby improving market-wide liquidity.

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[28] *See* note 17, *supra.*

D Orders at the Close

The Exchange believes that offering an alternative way to qualify for the $0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of $0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction. Moreover, the proposed fees are equitable because all similarly situated member organizations will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

Small DMM Incentive

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace and reducing smaller DMM's reliance on transaction fees. Moreover, the proposal is an equitable allocation of fees because it would reward DMM units for their increased risks and heightened quoting and other obligations. As such, it is equitable to offer smaller DMM units an additional flat, per security credit for orders that add liquidity. The proposed rebate is also equitable because it would apply equally to any DMM unit of a certain size. In addition, the proposed alternative way for member organizations that operate a DMM unit to qualify for the Non Display Tier rebates is equitable because a member organization that would not qualify for the rebates operation of a DMM unit with a certain number of registrations that meet the incentive quoting requirements would have the ability to qualify for the rebates based on adding volume in Non-Displayed Limit Orders in Tapes A, B and C as set forth under the modified qualification criteria.

The Exchange notes that at this time there is currently only one DMM unit that could qualify for the proposed rebate based on its number of assigned securities. The Exchange believes that the proposal would provide an equal incentive to any member organization to maintain a DMM unit, and that the proposal constitutes an equitable allocation of fees because all similarly situated member organizations would be eligible for the same rebate.

Deletion of Underutilized Fees for Orders With a Retail Modifier

The Exchange believes the proposal equitably allocates fees among its market participants because the underutilized fees the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of the underutilized fees would apply to all similarly-situated member organizations that send orders, including MOC and LOC orders, to the Exchange with a Retail Modifier on an equal basis. All such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

Routing Fees to NYSE American for Tape B and C Securities Below $1.00

The Exchange believes its proposal equitably allocates its fees among market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all member organizations that route orders in securities below $1.00 to NYSE American, and each such member organization would be charged the proposed fee when utilizing the functionality. Without having a view of member organizations' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed fee would result in any member organization from reducing or discontinuing its use of the routing functionality. Moreover, the proposed fee would be equitable because it is consistent with or lower than fees charged on other exchanges.[29]

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Credits for Non-Displayed Limit Orders

The Exchange believes that offering the proposed credits to member organizations based on the amount of liquidity provided to the Exchange in non-displayed liquidity in Tape A, B, and C securities with a per share stock price below $1.00 would provide a further incentive for all member organizations to provide additional liquidity to the Exchange.

[29] *See* note 17, *supra.*

D Orders at the Close

The Exchange believes that offering an alternative way to qualify for the lower $0.0008 per share fee for executed D Orders last modified in the last 3 minutes before the scheduled close of trading and a new fee of $0.0009 for member organizations in MOC/LOC Tiers 1, 2 and 3 and that have Adding ADV of at least 0.65% of Tape A CADV is not unfairly discriminatory because the proposed change would encourage greater marketable and other liquidity at the closing auction. The Exchange believes that the proposal is not unfairly discriminatory because all similarly situated member organizations that submit D Orders last modified in the last 3 minutes before the scheduled close of trading above the first 750,000 ADV of the aggregate of executions at the close by a member organization will be subject to the same fee structure, which will automatically adjust based on prevailing market conditions.

Small DMM Incentive

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. For example, member organizations could display quotes on competing exchanges rather than quoting sufficiently on the Exchange to meet the proposed 25% NBBO quoting requirement. The Exchange believes that offering an additional rebate for DMM units with 150 or fewer assigned securities in the previous month would provide a further incentive for smaller DMM units to quote and trade their assigned securities on the Exchange, and will generally allow the Exchange and DMM units to better compete for order flow, thus enhancing competition. The Exchange also believes that the requirement of 150 or fewer assigned securities to qualify for the credit is not unfairly discriminatory because it would apply equally to all existing and prospective member organizations with 150 or fewer assigned securities that choose to maintain a DMM unit on the Exchange. The Exchange does not believe that it is unfairly discriminatory to offer incentives based on a maximum threshold. The Exchange notes that it currently offers incentives that apply equally to all member organizations that cannot or choose not to exceed a certain volume threshold.[30] The Exchange

[30] For instance, as noted above, the first 750,000 ADV of the aggregate of executions at the close by a member organization are not charged. *See* NYSE

Continued

believes that the proposal would provide an equal incentive to any member organization to operate and maintain a DMM unit, and that the proposal would not be unfairly discriminatory because the threshold-based incentive would be offered on equal terms to all similarly situated member organizations. Similarly, the proposal does not permit unfair discrimination because the proposed alternative way for member organizations that operate a DMM unit to qualify for the Non Display Tier rebates would be applied to all similarly situated member organizations, who would all be eligible for the same credits on an equal basis. Member organizations could qualify the Non Display Tier rebates either by operating a DMM unit that meets the existing and proposed incentive quoting requirements at the NBBO or meeting the requirements of the Non Display Tiers as modified by this proposal. In both cases, the proposal does not permit unfair discrimination because the proposed criteria apply equally to all similarly situated member organizations, and all member organizations eligible for the rebates under either criteria would be eligible for the same credits on an equal and non-discriminatory basis. Moreover, the Exchange does not believe that offering a lower remove fee to member organizations that operate a DMM unit and meet Adding ADV requirements would be unfairly discriminatory given that member organizations operating a DMM unit have greater risks and heightened quoting and other obligations than other market participants. As such, it is equitable and not unfairly discriminatory to offer member organizations operating a DMM unit that also meet incentive quoting requirements the ability to receive the Non Display Tier rebates as other member organizations that do not operate a DMM unit and thus do not have the same quoting and trading obligations as DMM units. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

Deletion of Underutilized Fees for Orders With a Retail Modifier

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the underutilized fees would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating fees that are underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of an underutilized fee would make the Price List more accessible and transparent.

Routing Fees to NYSE American for Tape B and C Securities Below $1.00

The Exchange believes its proposed routing fee is not unfairly discriminatory because the fee would be applicable to all member organizations on an equal and non-discriminatory basis.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to charge a fee would be assessed on an equal basis to all member organizations that route orders in securities below $1.00 to NYSE American. Moreover, the proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated member organizations. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among member organizations because the ability to route to NYSE American would remain available to all member organizations on an equal basis and each such participant would be charged the same fee for using the functionality.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A) [31] of the Act and subparagraph (f)(2) of Rule 19b–4 [32] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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 under section 19(b)(2)(B) [33] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–04 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NYSE–2024–04. 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

Price List, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(2).

[33] 15 U.S.C. 78s(b)(2)(B).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–04 and should be submitted on or before February 16, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01508 Filed 1–25–24; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–1158]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: License Requirements for Operation of a Launch Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected includes data required for performing launch site location analysis. The launch site license is valid for a period of 5 years. Respondents are licensees authorized to operate sites.

DATES: Written comments should be submitted by March 26, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By Mail: Charles Huet, 800 Independence Avenue SW, Room 331, Washington, DC 20591.

By Fax: 202–267–5463.

FOR FURTHER INFORMATION CONTACT: Charles Huet by email at: *Charles.huet@faa.gov;* phone: 202–267–7427.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0644.

Title: License Requirements for Operation of a Launch Site.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The data requested for a license application to operate a commercial launch site are required by 51 U.S.C. 50904, Restrictions on launches, operations, and reentries. The information is needed in order to demonstrate to the FAA Office of Commercial Space Transportation (FAA/AST) that the proposed activity meets applicable public safety, national security, and foreign policy interest of the United States.

Respondents: Approximately 2 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2,322 hours.

Estimated Total Annual Burden: 4,644 hours.

Issued in Washington, DC.

James Hatt,

Space Policy Division Manager, Office of Commercial Space Transportation.

[FR Doc. 2024–01516 Filed 1–25–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2020–0133]

National Historic Landmark Nuclear Ship Savannah Available; Request for Information; Period Extension

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of vessel availability and request for information period extension.

SUMMARY: On October 30, 2023, the Maritime Administration (MARAD) published a Notice of Availability and Request for Information (NOA and RFI) in the **Federal Register** to determine preservation interest from entities that may wish to acquire the National Historic Landmark (NHL) Nuclear Ship Savannah (NSS). MARAD is decommissioning the nuclear power plant of the NSS, which will result in the termination of the ship's Nuclear Regulatory Commission (NRC) license, making the ship available for disposition, including potential conveyance or preservation. Information received in response to this RFI will help to inform the development of viable preservation alternatives for the NSS. Due to interest generated and to allow interested parties additional time to respond, MARAD is extending the response period by 45 days, to April 1, 2024, and adding an additional information session/site visit. In responding to the RFI, please review the below **SUPPLEMENTARY INFORMATION**/Information Requested section to inform your submission.

DATES: The response period for this RFI, published October 30, 2023 (88 FR 74228), is extended to April 1, 2024.

MARAD will host an additional information session/site visit for interested parties on February 24, 2024, to allow potential responders the opportunity to ask MARAD questions regarding the NSS and to view the ship. The information session will take place in a hybrid format, and will be held onboard the NSS, online, or by phone. The site visit will be held onboard the NSS. You must RSVP for the information session/site visit to the email or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section below no later than February 17, 2024, to facilitate entry or to receive information to attend virtually.

Parties who are unable to make this date may request alternate arrangements by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

[34] 17 CFR 200.30–3(a)(12).

Special Services. The NSS is not compliant with the Americans with Disabilities Act. The ship has some capability to accommodate persons with impaired mobility, for which advance notice is required. If you require accommodations to attend the site visit, please include this information in your RSVP. The U.S. Department of Transportation is committed to providing all participants equal access to this meeting. If you need alternative formats or services such as sign language, interpretation, or other ancillary aids, please also include that in your RSVP. Additional dates may be provided, or parties may request alternate dates subject to the same conditions as above.

ADDRESSES: You may submit your responses to this RFI and any supplemental information by any of the following methods:

- *Email: marad.history@dot.gov*. Please include NS Savannah RFI in the subject line of the email.
- *Mail:* N.S. Savannah/Savannah Technical Staff, Pier 13 Canton Marine Terminal, 4601 Newgate Avenue, Baltimore, MD 21224, ATTN: Erhard Koehler.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Search MARAD–2020–0133 and follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Erhard W. Koehler, Senior Technical Advisor, N.S. Savannah, Maritime Administration, at (202) 680–2066 or via email at *marad.history@dot.gov*. Additional information regarding the vessel is available at *https://www.maritime.dot.gov/nssavannah*.

SUPPLEMENTARY INFORMATION:

Built in 1959, the NSS is the world's first nuclear-powered merchant ship and served as a signature element of President Eisenhower's Atoms for Peace program. While in service, NSS demonstrated the peaceful use of atomic power and explored the feasibility of nuclear-powered merchant vessels. NSS was retired from active service in 1970. The ship was listed in the National Register of Historic Places in 1983 and designated as an NHL in 1991 for exhibiting exceptional value in illustrating the nuclear, maritime, transportation, and political heritages of the United States.

Disposition

The NRC license termination will lead to MARAD's disposition of the NSS. Because the decommissioning and disposition of the NHL ship is an Undertaking under Section 106 of the NHPA, with an unknown end-state, MARAD developed and executed a PA covering the decommissioning and disposition of the ship. The PA outlines the process by which the disposition of NSS will be considered among the NRC, the Advisory Council on Historic Preservation (ACHP), and the Maryland State Historic Preservation Officer (SHPO). Concurrent with the decommissioning project, MARAD requests information from entities that may be interested in acquiring the ship for conveyance and preservation purposes as prescribed in the PA. The approximate date on which the vessel will be available for transfer is three (3) to six (6) months after NRC license termination.

Stipulation IV of the PA outlines a disposition alternatives development process wherein MARAD will study and evaluate alternatives that would result in the preservation of the NSS. This process will include the development of a Disposition Alternatives Study and the publication of a NOA and RFI. Although the PA lists these activities sequentially, with the Disposition Alternatives Study preceding the publication of the NOA and RFI, the signatories of the PA recently concurred that the NOA and RFI will instead precede the Disposition Alternatives Study. Therefore, MARAD is publishing this NOA and RFI in accordance with Stipulation IV of the PA, in advance of the Disposition Alternatives Study.

Conveyance Methods

MARAD is investigating several different methods of conveyance of the NSS, and these will be presented in the Disposition Alternatives Study. These conveyance methods may or may not involve MARAD's continued involvement with the ship. However, in order to foster preservation by removing a future encumbrance, MARAD will either retain the title or will retain a reversionary interest in the title. By this act MARAD is choosing to defer its obligation to scrap Savannah to some future date. MARAD's existing ship donation authority is one of the methods of conveyance that will be used. Parties interested in obtaining the vessel through this method may apply at any time. Further information on MARAD's ship donation program may be found at the following link: *https://www.maritime.dot.gov/national-defense-reserve-fleet/ship-disposal-program/ship-donation*.

Other conveyance methods may include, but are not limited to, a modified donation process, chartering or leasing the ship, cooperative agreements, or potentially partnering with another entity to maintain and operate the ship. MARAD expects to convey the ship in as-is condition at the time of conveyance, to include all mooring lines, fenders, and related equipment, all safety equipment, including spare parts for active safety systems, and tools and stock. The ship will contain a full complement of drawings, and technical and operating manuals. The ship's historic fabric will not be disturbed; however, if title is transferred from the Federal Government some material may be removed as mitigation. All mitigation efforts will be subject to consultation in accordance with the stipulations in the PA.

Technical Information

Technical information about the NSS in its present configuration will be posted to the MARAD docket and website concurrent with the publication of this notice. The information will include at least the following:

- Ship's drawings and photographs;
- Reports documenting the ship's existing material condition and expected condition at the time of license termination;
- Utility consumption data; and,
- Last material inventory completed.

Information Requested

RFI respondents should provide MARAD with a capability statement that includes at least the following information:

- Proposed use(s) for the ship;
- Mission statement for your organization;
- Proposed or potential locations for ship;
- Staffing resources for maintaining and operating the ship;
- Experience with ship maintenance and operations;
- Experience with historic property or structures;
- Funding sources; and,
- Preferred conveyance mechanism for acquisition of the ship.

Responses, including personal identifiable information will be made public, so please provide any confidential information in a separate attachment clearly labeled, so that it may be withheld from disclosure as provided by law. Respondents should consider and discuss in their capability statement factors such as the density of museum ships in the location proposed, the nexus between the proposed location and NSS operating history, and any other relevant special criteria favoring the response.

Background

Built in 1959, the NSS is the world's first nuclear-powered merchant ship

and served as a signature element of President Eisenhower's Atoms for Peace program. While in service, the NSS demonstrated the peaceful use of atomic power as well as the feasibility of nuclear-powered merchant vessels. NSS operated in experimental service as a passenger/cargo ship from 1962 to 1965, during which time it travelled 90,000 miles, visited 13 countries, and hosted 1.4 million visitors. Following the successful conclusion of the experimental phase, the ship entered its commercial phase in 1965. The ship was operated as a cargo ship generating nearly $12,000,000 in revenue between 1965 and 1970, as well as continuing to serve as a goodwill ambassador for the peaceful use of nuclear power. After successfully fulfilling its objectives, NSS operations were ceased in 1970 and the ship was deactivated and defueled in 1971.

Following deactivation, the NSS was moved to the city of Savannah, GA, where it was to be part of a proposed Eisenhower Peace Memorial; however, the memorial was never established. In 1980, Congress passed Public Law 96–331, which authorized the Secretary of Commerce to bareboat charter the ship to the Patriots Point Development Authority of South Carolina. The NSS operated as a museum ship at the Patriots Point Naval and Maritime Museum from 1981 through 1994. During this time, the NSS was listed in the National Register of Historic Places (1983) and designated as an NHL (1991) for exhibiting exceptional value in illustrating the nuclear, maritime, transportation, and political heritages of the United States. Additionally, during this time the ship was designated an International Historic Mechanical Engineering Landmark by the American Society of Mechanical Engineers (1983) and a Nuclear Engineering Landmark by the American Nuclear Society (1991).

Following termination of the charter in 1994, the NSS returned to MARAD and was entered into the James River Reserve Fleet in Virginia. The ship was removed from the reserve fleet in 2006 and underwent repairs prior to being relocated in 2008 to Baltimore, Maryland, where it is currently berthed. In 2017, funds for decommissioning of the ship were appropriated. Because the decommissioning and disposition of the NSS is an Undertaking under Section 106 of the NHPA, MARAD initiated consultation in 2018 with the Maryland SHPO, the ACHP, the NRC, the NPS, and other consulting parties. Given the complexities of the Undertaking, including the yet undetermined disposition of the NSS, the parties agreed to develop a PA to guide the execution of the Undertaking.

The PA for the Decommissioning and Disposition of the NSS was executed in March 2023, and it outlines the process by which the disposition of NSS will be considered and executed, concurrent with the decommissioning project. The decommissioning process is well underway, and dismantlement and removal of the major systems, structures, and components that were part of the ship's nuclear power plant is complete. As part of the decommissioning process, MARAD has made numerous modifications and improvements to the NSS from 2015 through the present. These improvements include climate controls, sanitary spaces, shore power, mechanical systems, mooring and access/egress equipment, alarm, and monitoring systems (fire/smoke, intrusion, flooding, security cameras), restored public spaces, office spaces, and administrative infrastructure. Typically, the greatest challenge to any static museum ship effort is the cost associated with converting or transforming the ship into a site suitable and safe for visitors. MARAD has already made improvements, as listed above, which may help to defray some of the initial starting costs for potential recipients who may be interested in receiving the ship. Additional details about the ship's condition are included in the attachments posted to the MARAD docket and website.

The disposition process is sequenced to reach a conclusion at the same time that decommissioning ends—effective with the license termination to allow a seamless transition to whichever end-state condition is approved. MARAD anticipates making its disposition decision no later than the license termination date with conveyance to follow three to six months later, after decommissioning, demobilization, and vessel redelivery contract actions are completed.

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 1.81 and 1.93; 36 CFR part 800; 5 U.S.C. 552b.)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–01502 Filed 1–25–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend for three years, with revision, the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031, FFIEC 041, and FFIEC 051), the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), and the Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule (FFIEC 102), which are currently approved collections of information for each agency. The agencies are requesting comment on proposed revisions to these collections related to the agencies' regulatory capital rule proposal that was published on September 18, 2023 (proposed capital rule). The reporting revisions are proposed to be effective as of the September 30, 2025, report date. At the end of the comment period for this notice, the FFIEC and the agencies will review any comments received to determine whether to modify the proposal in response to such comments. As required by the PRA, the agencies

will then publish a second **Federal Register** notice for a 30-day comment period and submit the final Call Report, FFIEC 101 and FFIEC 102 to OMB for review and approval.

DATES: Comments must be submitted on or before March 26, 2024.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the ''Call Report, FFIEC 101 and FFIEC 102 Revisions,'' will be shared among the agencies.

OCC: You may submit comments, which should refer to ''Call Report, FFIEC 101 and FFIEC 102 Revisions,'' by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0081, 1557–0239, and 1557–0325, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0081, 1557–0239, 1557–0325'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0081'' or ''1557–0239'' or ''1557–0325.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

Board: You may submit comments, which should refer to ''Call Report, FFIEC 101 and FFIEC 102 Revisions,'' by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include ''Call Report, FFIEC 101, and FFIEC 102 Revisions,'' in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

FDIC: You may submit comments, which should refer to ''Call Report, FFIEC 101 and FFIEC 102 Revisions,'' by any of the following methods:

- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''Call Report, FFIEC 101 and FFIEC 102 Revisions,'' in the subject line of the message.
- *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officers for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the report forms and instructions for the Call Report, FFIEC 101 and FFIEC 102 can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, Chief Counsel's Office, (202) 649–5490.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Affected Reports

All of the proposed reporting changes discussed in this notice affect the Call Report, FFIEC 101 and FFIEC 102.

A. Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051)

The agencies propose to extend for three years, with revision, their information collections associated with the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: FFIEC 031 (Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices), FFIEC 041 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only), and FFIEC 051 (Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $5 Billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revision and extension of currently approved collections.

OCC

OMB Control No: 1557–0081.

Estimated Number of Respondents: 1,015 national banks and federal savings associations.

Estimated Average Burden per Response: 40.69 burden hours per quarter to file.

Estimated Total Annual Burden: 165,201 burden hours to file.

Board

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 699 state member banks.

Estimated Average Burden per Response: 44.13 burden hours per quarter to file.

Estimated Total Annual Burden: 123,387 burden hours to file.

FDIC

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 2,990 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 38.86 burden hours per quarter to file.

Estimated Total Annual Burden: 464,766 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 031, the FFIEC 041, and the FFIEC 051 reports for each agency. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 84.29 (FFIEC 031), 54.54 (FFIEC 041), and 34.39 (FFIEC 051). The changes to the Call Report forms and instructions proposed in this notice resulted in the following estimated changes in burden hours per quarter. For the FFIEC 031 report, the revisions resulted in an average decrease across all agencies of approximately 0.24 hours per quarter; for the FFIEC 041 report, the revisions resulted in an average decrease across all agencies of approximately 0.06 hours per quarter; and for the FFIEC 051 report, the revisions resulted in an average decrease across all agencies of approximately 0.01 hours per quarter. The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.,* size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Extension for three years and revision of currently approved collections. In addition to the proposed revisions discussed below, Call Reports are periodically updated to clarify instructional guidance and correct grammatical and typographical errors on the forms and instructions, which are published on the FFIEC website.[1] These non-substantive updates may also be commented upon.

Legal Basis and Need for Collections

The Call Report information collections are mandatory: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as agency-specific missions affecting federal and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate the risk-based assessments for insured depository institutions.

[1] *www.ffiec.gov/forms031.htm; www.ffiec.gov/forms041.htm;www.ffiec.gov/forms051.htm.*

B. FFIEC 101

The agencies propose to extend for three years, with revision, the FFIEC 101 report.

Report Title: Regulatory Capital Reporting for Large Banking Organizations.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Type of Review: Revision and extension of currently approved collections.

OCC

OMB Control No.: 1557–0239.

Estimated Number of Respondents: 49 national banks and federal savings associations.

Estimated Time per Response: 797.35 burden hours one-time for initial set-up and 437.45 burden hours per quarter to file ongoing.

Estimated Total Annual Burden: 38,972 burden hours for one-time initial set-up and 85,733 to file for ongoing.

Board

OMB Control No.: 7100–0319.

Estimated Number of Respondents: 52 state member banks, bank holding companies, savings and loan holding companies and intermediate holding companies.

Estimated Time per Response: 797.35 burden hours one-time for initial set-up and 437.45 burden hours per quarter to file ongoing.

Estimated Total Annual Burden: 41,358 burden hours for one-time initial set-up and 90,982 to file for ongoing.

FDIC

OMB Control No.: 3064–0159.

Estimated Number of Respondents: 9 insured state nonmember bank and state savings association.

Estimated Time per Response: 797.35 burden hours one-time for initial set-up and 437.45 burden hours per quarter to file ongoing.

Estimated Total Annual Burden: 7,158 burden hours for one-time initial set-up and 15,747 to file for ongoing.

Type of Review: Extension and revision of currently approved collections.

Legal Basis and Need for Collections

Currently, each banking organization subject to Category I or Category II standards is required to report quarterly regulatory capital data and, along with each top-tier banking organization subject to Category III standards,[2] supplementary leverage ratio information on the FFIEC 101. Under this proposal, each banking organization subject to Category I, II, III or IV standards would report revised regulatory capital and supplementary leverage information. The FFIEC 101 information collections are mandatory for applicable banking organizations under the following authorities: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (federal and state savings associations), and 12 U.S.C. 1844(c), 3106, and 3108 (intermediate holding companies). Certain data items in this information collection are given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

The agencies use data reported in the FFIEC 101 to assess and monitor the levels and components of each reporting entity's applicable capital requirements and the adequacy of the entity's capital under the capital rule,[3] including the supplementary leverage ratio, as applicable; to evaluate the impact of the capital rule on individual reporting entities and on an industry-wide basis and its competitive implications; and to supplement on-site examination processes. The reporting schedules would also assist Category I, Category II, Category III, and Category IV banking organizations in understanding expectations relating to the system development necessary for implementation and validation of the capital rule. Submitted data that are released publicly would also provide other interested parties with additional information about Category I, Category II, Category III, and Category IV banking organizations' regulatory capital.

C. FFIEC 102

The agencies propose to extend for three years, with revision, the FFIEC 102 report. The proposed revisions include the addition of a new confidential report (FFIEC 102a).

Report Title: Market Risk Regulatory Report.

Form Number: FFIEC 102.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Number: 1557–0325.

Estimated Number of Respondents: 53 national banks and federal savings associations, 53 (FFIEC 102), 53 (FFIEC 102a).

Estimated Average Time per Response: 83.55 hours one-time for initial set-up and 41.77 hours for ongoing (FFIEC 102); 142.49 hours one-time for initial set-up and 50.83 hours for ongoing (FFIEC 102a).

Estimated Total Annual Burden: 4,428 hours one-time for initial set-up and 8,856 for ongoing (FFIEC 102); 7,552 one-time for initial set-up and 10,777 hours for ongoing (FFIEC 102a).

Board

OMB Number: 7100–0365.

Estimated Number of Respondents: 30 state member banks, bank holding companies, savings and loan holding companies, and intermediate holding companies (FFIEC 102), 30 (FFIEC 102a).

Estimated Average Time per Response: 83.55 hours one-time for initial set-up and 41.77 hours for ongoing (FFIEC 102); 142.49 hours one-time for initial set-up and 50.83 hours for ongoing (FFIEC 102a).

Estimated Total Annual Burden: 2,506 hours one-time for initial set-up and 5,013 hours for ongoing (FFIEC 102); 4,275 hours one-time for initial set-up and 6,100 hours for ongoing (FFIEC 102a).

FDIC

OMB Number: 3064–0199.

Estimated Number of Respondents: 9 insured state nonmember bank and state savings association (FFIEC 102); 9 (FFIEC 102a).

Estimated Average Time per Response: 83.55 hours one-time for initial set-up and 41.77 hours for ongoing (FFIEC 102); 142.49 hours one-time for initial set-up and 50.83 hours for ongoing (FFIEC 102a).

Estimated Total Annual Burden: 752 hours one-time for initial set-up and 1,504 hours for ongoing (FFIEC 102); 1,282 hours one-time for initial set-up and 1,830 hours for ongoing (FFIEC 102a).

Type of Review: Revision and extension of currently approved collections.

Legal Basis and Need for Collection

Currently, a banking organization with aggregate trading assets and trading liabilities that, as of the most recent calendar quarter, equal to $1 billion or more, or 10 percent or more of the banking organization's total consolidated assets (market risk institutions), is required to calculate market risk capital requirements under subpart F of the agencies' capital rule[4] and submit the FFIEC 102 report. Under this proposal, and consistent with the agencies' proposed changes to the definition of market risk institutions, any holding company subject to Category I, Category II, Category III, or Category IV standards or any subsidiary thereof, if the subsidiary engaged in any trading activity over any of the four most recent quarters, would submit the FFIEC 102. Additionally, a banking organization with average aggregate trading assets and trading liabilities (excluding customer and proprietary broker-dealer reserve bank accounts) over the previous four calendar quarters equal to $5 billion or more, or equal to 10 percent or more of total consolidated assets would also submit the report. The quarterly FFIEC 102 information collection is mandatory for market risk institutions under the following authorities: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a (b) (savings and loan holding companies), 12 U.S.C. 5365 (U.S. intermediate holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (savings associations).

The FFIEC 102 is filed quarterly with the agencies and provides information for market risk institutions. Each market risk institution is required to file the FFIEC 102 for the agencies' use in assessing the accuracy of the institution's calculation of its minimum capital requirements under the capital rule and in evaluating the institution's capital in relation to its risks. Additionally, the market risk information collected in the FFIEC 102: (a) permits the agencies to monitor the market risk profile of, and evaluate the impact and competitive implications of, the capital rule on individual market risk institutions and the industry as a whole; (b) provides the most current statistical data available to identify areas

[2] 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[3] 12 CFR part 3, subpart E (OCC); 12 CFR part 217, subpart E (Board); 12 CFR part 324, subpart E (FDIC).

[4] 12 CFR 3.201 (OCC); 12 CFR 217.201 (Board); and 12 CFR 324.201 (FDIC). Currently, the market risk framework of the capital rule generally applies to any banking institution with aggregate trading assets and trading liabilities equal to (a) 10 percent or more of quarter-end total assets or (b) $1 billion or more.

of market risk on which to focus for on-site and off-site examinations; (c) allows the agencies to assess and monitor the levels and components of each reporting institution's risk-based capital requirements for market risk and the adequacy of the institution's capital under the capital rule; and (d) assists market risk institutions in validating their implementation of the market risk framework.

As described in Section II of this **SUPPLEMENTARY INFORMATION**, the agencies are proposing to expand the data collection by creating the FFIEC 102a, Supervisory Market Risk Regulatory Report. This new form would collect information necessary for the agencies to evaluate a market risk institution's implementation of the market risk rule and validate a banking organization's internal models used in preparing the FFIEC 102.

Confidentiality

The current FFIEC 102 information collections are not given confidential treatment. The agencies are not proposing to provide confidential treatment under the revised collection, other than with respect to data collected under the proposed new Supervisory Market Risk Regulatory Report (FFIEC 102a). The data proposed to be collected on the Supervisory Market Risk Regulatory Report would include financial information used for the agencies' supervisory purposes that is not normally disclosed by the respondent organizations. This information could reveal trade secrets or cause significant competitive harm to the respondent organizations if disclosed. Therefore, the data collected on the Supervisory Market Risk Regulatory Report would be kept confidential by the agencies under 5 U.S.C. 552(b)(4) and (8).

II. Current Actions

Recently Proposed Amendments to the Regulatory Capital Rule for Large Banking Organizations and Banking Organizations With Significant Trading Activity

1. Background

On September 18, 2023, the agencies published in the **Federal Register** a proposed rule [5] to revise the risk-based capital requirements for large banking organizations. The proposed changes to regulatory capital requirements apply to banking organizations subject to Category I, Category II, Category III, or Category IV standards and to banking organizations with significant trading activities, all as defined in the proposed rule. The modifications to the capital rule would result in reporting changes that affect the Call Report, FFIEC 101, and FFIEC 102.

2. Proposed Revisions to the Call Report

The agencies are proposing to revise the Call Report forms and instructions to align with the proposed capital rule. The general instructions for each version of the Call Report (FFIEC 031, FFIEC 041, and FFIEC 051) would be revised to require each bank subject to the expanded risk-based approach under the proposed capital rule to file the FFIEC 031. The agencies also propose to revise the FFIEC 031 Schedule RC–R, Part I, Regulatory Capital Components and Ratios, to align the calculation of regulatory capital for institutions subject to Category III and IV standards with the calculation used for institutions subject to Category I and II standards, subject to certain transition provisions for components of Accumulated Other Comprehensive Income (AOCI) in the proposed capital rule. To identify Category III and IV institutions subject to the transition requirements, the agencies propose to add a new response option (''2'' for ''Phase-out'') for item 3.a ''AOCI opt-out election'' on the FFIEC 031, Schedule RC–R, Part I, to be used by these institutions. The general instructions and certain item instructions to the FFIEC 031, Schedule RC–R, Part II, Risk-Weighted Assets, also would be revised to reflect AOCI transition requirements in the proposed capital rule, as applicable.

Due to the expiration of certain transition periods in the agencies' existing regulatory capital rule, the agencies are proposing to remove from Schedule RC–R, Part I, item 21, ''Non-qualifying capital instruments subject to phase-out from additional tier 1 capital'' and item 40, ''Non-qualifying capital instruments subject to phase-out from tier 2 capital'' from all versions of the Call Report. Because the calculation of tier 2 capital under the expanded risked-based approach would differ from the calculation of tier 2 capital under the existing advanced approaches rule, the agencies propose to replace FFIEC 031 Schedule RC–R, Part I, item 42.b, ''(Advanced approaches institutions that exit parallel run only): Eligible credit reserves includable in tier 2 capital'' with ''Adjusted allowances for credit losses (AACL) includable in tier 2 capital (for institutions subject to the expanded risk-based approach)'' and revise certain subtotals on FFIEC 031, Schedule RC–R, Part I, that use this item.

Finally, the agencies are proposing changes to certain definitions and terminology in the forms and instructions consistent with the proposed capital rule, including revising terminology for advanced approaches capital under the existing rule to reflect the proposed expanded risk-based approach and the scope of banking organizations using the standardized approach for counterparty credit risk (SA–CCR). Further details of the revisions described above can be found in the proposed revised FFIEC 031, FFIEC 041, and FFIEC 051 forms and instructions, which have been posted to the FFIEC website.[6]

3. Proposed Revisions to FFIEC 101

The agencies are proposing to revise the FFIEC 101 forms and instructions to align with the proposed capital rule. Specifically, to incorporate the reporting revisions applicable to the proposed capital rule, the agencies are proposing to revise the FFIEC 101 general instructions to scope in Category III [7] and IV banking organizations in the reporting criteria, rename and modify Schedule A to update nomenclature in connection with the proposed capital rule revisions, remove Schedule B through Schedule S of the current FFIEC 101 report, and add new schedules as described below. To maintain consistency with the proposed capital rule, the agencies are also proposing to revise the title of the FFIEC 101 report from ''Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework'' to ''Regulatory Capital Reporting for Large Banking Organizations.'' The reporting modifications would enhance comparability of the FFIEC 101 to relevant parts of the Basel Framework disclosure standard, which would increase comparability of internationally active banks. The proposed FFIEC 101 revisions aim to promote market discipline through regulatory disclosure requirements.

The agencies are requesting comment on whether there should be any further changes to the report form items or instructions developed by the agencies consistent with the proposed capital rule.

Under the proposal, reporting institutions would continue to report Schedule A, which would be renamed to Schedule RCCR, Regulatory Capital Components and Ratios, and revised to align with the requirements of the

[5] 88 FR 64028 (September 18, 2023).

[6] *https://www.ffiec.gov/ffiec_report_forms.htm.*

[7] Top-tier Category III banking organizations are currently only required to file the SLR Tables 1 and 2.

proposed capital rule. First, the agencies are proposing to revise this schedule to remove the concept of eligible credit reserves and parallel run from the report form and instructions, and rename existing item 12, ''Expected credit loss that exceeds eligible credit reserves'' to ''AOCI transition adjustment amount (for Category III and IV institutions only)'' as the item would no longer be applicable. Category III and IV institutions would report AOCI transition amounts in item 12 during the transitional period. In addition, the agencies are proposing to replace item 50, ''Eligible credit reserve includable in tier 2 capital,'' with ''Adjusted allowances for credit losses (AACL) includable in tier 2 capital'' under the expanded risk-based approach and clarify the instructions for item 27. These changes would also result in the deletions of items 77 through 90, which would no longer be needed.

As a result of the new expanded risk based-approach framework for calculating risk-weighted assets under the proposed capital rule, the agencies are proposing to update item 60, ''Total risk-weighted assets (RWA),'' to ''Expanded total risk-weighted assets (accounting for transition provisions),'' and reflect for Category I, II, III and IV banking organizations a three-year transitional period to phase-in expanded total risk-weighted assets. To implement changes under the proposed capital rule that would require Category III and IV banking organizations to use the standardized approach for counterparty credit risk (SA–CCR) for derivatives exposures for purposes of the supplementary leverage ratio (SLR), the agencies are proposing to remove references to the current exposure methodology from instructions related to reporting the SLR. Consistent with the proposed capital rule, the agencies are also proposing to update the instructions to require all banking organizations that report the FFIEC 101 to report the SLR tables. To reflect the addition of a new 40 percent credit conversion factor (CCF) for unconditionally cancelable commitments under the proposed capital rule, the agencies propose to revise the SLR Table 2 instructions to align with the change. In addition, certain items related to the reporting of regulatory capital buffer requirements would be amended to reflect the proposed capital rule. Items 4, 33, 35, 47, and 49 in current Schedule A related to transition periods in the regulatory capital rule that have expired and are no longer applicable are proposed to be eliminated. Additionally, the agencies added granularity to the items relating to derivative transactions in SLR Table 2. This granularity provides a breakout of derivative transactions that involve commercial end-users and counterparties other than commercial end-users.

Current Schedules B through S would be removed, and institutions would be required to report risk-weighted asset and exposure information in new schedules described below. The new FFIEC 101 schedules would be as follows.

1. *Schedule OV1:* Overview of Expanded Total Risk-Weighted Assets. The purpose of this schedule is to provide an overview of expanded total risk-weighted assets (RWA) forming the denominator of the risk-based capital requirements. On this schedule, reporting institutions would report summary amounts of risk-weighted assets reported in detail on other FFIEC 101 schedules.

2. *Schedule CR1:* General Credit Risk Exposures and Credit Risk Mitigation (CRM) Effects. The purpose of this schedule is to illustrate the effect of CRM on capital requirement calculations under the proposed expanded risk-based approach for credit risk in the agencies' capital rule. On this schedule, institutions would report on-balance sheet and off-balance sheet credit risk exposures, the adjusted amounts of those credit risk exposures reflecting credit risk mitigants, and the corresponding risk-weighted assets and risk-weighted asset density.

3. *Schedule CR2:* Credit Risk Mitigation Techniques. The purpose of this schedule is to present the quantity of exposures under the expanded risk-based approach where CRM is applicable, and the amount of CRM attributed to each general type of credit risk mitigant. On this schedule, reporting institutions would report amounts of exposures that are unsecured, the amounts that are secured, and the quantity of those secured exposures that are secured by collateral, by eligible guarantees, and by eligible credit derivatives.

4. *Schedule CR3:* Credit Risk Exposures by Exposure Categories and Risk Weights. The purpose of this schedule is to present the breakdown of credit risk exposures by category and then by the applicable risk weight under the expanded risk-based approach. On this schedule, institutions would report the amounts of exposures by asset class, differentiated by the applicable risk weights for each asset class. For off-balance sheet exposures, the applicable credit conversion factor (CCF) would be applied first before the applicable risk weight. Total credit risk-weighted assets under the expanded risk-based approach would reflect the aggregate total exposures for each asset class after risk weights and, if applicable, credit conversion factors are applied to the exposure amounts.

5. *Schedule CCR:* Counterparty Credit Risk Exposures and Risk Weights. The purpose of this schedule is to provide a breakdown of counterparty credit risk exposures calculated according to the standardized approach by type of counterparties and by risk weight.

6. *Schedule SEC1:* Securitization Exposures Subject to Subpart E of the Capital Rule. The purpose of this schedule is to present a reporting institution's securitization exposures subject to the credit risk-based capital framework. On this schedule, institutions would report the details of traditional and synthetic retail and wholesale securitization exposures subject to the credit risk-based capital framework.

7. *Schedule SEC2:* Securitization Exposures Subject to Subpart F of the Capital Rule. The purpose of this schedule is to present a reporting institution's securitization exposures subject to the market risk capital framework. On this schedule, institutions would report the details of traditional and synthetic retail and wholesale securitization exposures subject to the market risk capital framework.

8. *Schedule SEC3:* Securitization Exposures and Capital Requirements under Subpart E—Reporting Institution Acting as Originator/Sponsor. The purpose of this schedule is to present securitization exposures where the reporting institution acts as originator or sponsor subject to the credit risk-based capital framework and the associated capital requirements. On this schedule, institutions would report details of traditional and synthetic securitization exposure values and risk-weighted assets by risk weights and regulatory approach when the reporting institution acts as an originator or sponsor.

9. *Schedule SEC4:* Securitization Exposures and Capital Requirements under Subpart E—Reporting Institution Acting as Investor. The purpose of this schedule is to present securitization exposures where the reporting institution acts as investor subject to the credit risk-based capital framework and the associated capital requirements. On this schedule, reporting institutions would report details of traditional and synthetic securitization exposure values and risk-weighted assets by risk weights and regulatory approach when the reporting institution acts as an investor.

10. *Schedule CVA:* Basic and Standardized Measures for Credit Valuation Adjustment (CVA) Risk. The purpose of this schedule is to provide the components used for the computation of risk-weighted assets under the basic approach and the standardized approach for CVA risk. On this schedule, institutions would report CVA risk-related elements, risk-weighted assets, and associated capital requirement amounts.

11. *Schedule EQ:* Risk-Weighted Assets for Equity Exposures. This schedule would collect information regarding equity exposures under the expanded simple risk-weight approach (ESRWA) and under the look-through approaches by exposures type and risk weight.

12. *Schedule OR1:* Historical Operational Losses. The purpose of this schedule is to disclose total annual operational losses incurred over the past ten years, based on the accounting date of the incurred losses, to inform the operational risk capital calculation. On this schedule, reporting institutions would report items related to total amounts of operational losses and total numbers of operational loss events over the past ten years.

13. *Schedule OR2:* Business Indicator and Subcomponents. The purpose of this schedule is to disclose the business indicator (BI) and its subcomponents, which inform the operational risk capital calculation. On this schedule, institutions would report BI related items such as the interest, lease, and dividend component, the services component, and the financial component.

14. *Schedule OR3:* Minimum Required Operational Risk Capital. The purpose of this schedule is to report operational risk regulatory capital requirements. On this schedule, institutions would report operational risk minimum regulatory capital requirement calculation items such as the business indicator component, the internal loss multiplier, and operational risk risk-weighted assets.

15. *Optional Narrative:* The purpose of this schedule is for institutions to provide a brief narrative statement to supplement data reported in the Regulatory Capital Reporting for Large Banking Organizations.

Further details of the revisions described above can be found in the proposed revised FFIEC 101 form and instructions, which have been posted to the FFIEC website.[8]

[8] *www.ffiec.gov/forms101.htm.*

4. Proposed Revisions to the FFIEC 102

The agencies propose to amend the FFIEC 102 forms and instructions so that relevant reporting requirements are aligned with the capital proposal.[9] Consistent with the scope changes for applicability of the market risk capital requirements in the proposed capital rule, the agencies are proposing to revise the reporting criteria for FFIEC 102 to apply to banking organizations subject to Category I, Category II, Category III, or Category IV standards and to banking organizations with significant trading activity. As defined in the proposed capital rule, a banking organization with significant trading activity would be any banking organization with average aggregate trading assets and trading liabilities, excluding customer and proprietary broker-dealer reserve bank accounts, equal to $5 billion or more, or equal to 10 percent or more of total consolidated assets at quarter end as reported on the most recent quarterly regulatory report. The agencies intend to conform the scope of proposed reporting under the capital rule only to those institutions that are within the scope of the proposed capital rule.

To maintain consistency with the proposed capital rule and simplify the report title, the agencies are also proposing to revise the title of the FFIEC 102 report from ''Market Risk Regulatory Report for Institutions Subject to the Market Risk Capital Rule'' to ''Market Risk Capital Report.''

Additionally, to implement the new market risk capital requirements framework in the proposed capital rule, the agencies propose to remove the current data collected on FFIEC 102, and to add new data collection for an institution's standardized measure for market risk and the models-based measure for market risk, if applicable. Under the proposal, the revised FFIEC 102 would be subdivided into four sections: Part I, Standardized capital requirements for market risk; Part II, Models-based capital requirements for market risk; Part III, Market risk-weighted assets; and Part IV, Memoranda, as described below.

Part I, Standardized capital requirements for market risk, would include data items for calculating the standardized measure for market risk, which would be the default methodology for calculating market risk capital requirements for all banking organizations subject to market risk capital requirements. It would collect data for the sensitivities-based method capital requirement, the standardized default risk capital requirement, and the residual risk add-on components. Furthermore, items related to the three additional components for standardized measure for market risk that would apply in limited instances to specific positions would be collected for: (1) a capital add-on for re-designations; (2) other capital add-ons established by the primary Federal supervisor, and (3) a fallback capital requirement.

Part II, Models-based capital requirement for market risk, would contain the core components data elements for the models-based measure for market risk, which consists of (1) the internal models approach capital requirements for model-eligible trading desks; (2) the additional capital requirement applied to model-eligible trading desks with shortcomings in the internal models used for determining risk-based capital requirements in the form of a profit and loss attribution (PLA) add-on, if applicable; and (3) the standardized approach capital requirements for model-ineligible trading desks. The internal models approach capital requirements for model-eligible trading desks would itself consist of four components: (1) the capital measure for non-modellable risk factors, (2) capital measure for non-modellable risk factors (stressed expected shortfall), (3) the standardized default risk capital requirement, and (4) capital multiplier. Specifically, an institution would report in this section its unconstrained and constrained expected shortfall for relevant risk classes, capital requirements for modellable and non-modellable risk factors, standardized default risk capital requirement, PLA add-on, capital multiplier, capital requirement for model-eligible trading desks, and capital add-ons among other relevant data for calculating the models-based measure for market risk.

Part III, Market risk-weighted assets, would collect data items for the standardized market risk-weighted assets and the models-based market risk-weighted assets.

Lastly, Part IV, Memoranda, would be added to the FFIEC 102 for all market risk institutions to report total sensitivities-based method capital requirement under high, medium, and low correlation scenarios and total notional amount of market risk covered positions. The proposed sub-items of these notional amounts include the following: foreign exchange positions, commodity positions, net short credit

[9] All of the terms and concepts listed in this section are described in detail in the proposed capital rule. Commenters should refer to the proposed capital rule when commenting on the associated proposed reporting revisions.

positions, net short equity positions, customer and proprietary broker-dealer reserve bank accounts, and other market risk covered positions.

The proposed reporting requirements described above would provide meaningful disclosure without requiring disclosure of proprietary information. The reports would enable the federal supervisors to monitor a banking organization's risk profile related to market risk and identify changes in the risk profile that would pose risks to the financial system. These revised disclosure requirements are designed to increase transparency and complement the supervisory review process by encouraging market discipline through enhanced and meaningful public disclosure. The agencies intend for these proposed disclosure requirements to strike an appropriate balance between the supervisory and market benefits of reporting and the additional burden to a banking organization that would be required to provide disclosures.

5. Proposed FFIEC 102a

In addition to the revisions described above, the agencies propose to add a separate Supervisory Market Risk Regulatory Report (FFIEC 102a) that would function as a companion to the FFIEC 102 report in implementing the proposed capital rule's revised market risk framework. The proposed Supervisory Market Risk Regulatory Report would be collected on a quarterly basis, would be confidential, and would apply only to banking organizations that calculate market risk capital requirements under the models-based measure for market risk. Under the proposal, the FFIEC 102a would be subdivided into three sections. The first section, Part 1, General Information, would collect general information for a banking organization's trading desk(s) such as the number of regulator approved trading desks and number of regulator approved notional trading desks. It would also include data on the organizational structure of the trading desk such as trading desks identifier, trading desk name, organization unit identifier, and the asset class for each trading desk provided by the asset class that gives rise to the trading desk's greatest aggregate market risk exposure as of the submission date.

The second section, Part 2, Aggregate Trading Portfolio Backtesting, would collect aggregate level data for model eligible trading desk that includes the market value of total trading assets, market value of total trading liabilities, and data related to the number of value at risk (VaR) backtesting exceptions during the quarter. This part would also include data on the daily VaR-based measures calibrated to the 99.0th percentile; the daily expected shortfall (ES) based measure calibrated at the 97.5th percentile; liquidity horizon-adjusted ES-based measures; the actual profit and loss; the hypothetical profit and loss; and the p-value of the profit or loss for each day. The third section, Part 3, Backtesting and PLA Testing for Model-Eligible Trading Desks, would be reported at the trading desk level. The data in this section would include general information related to the trading desk such as the name, unique identifier for the trading desk, description of the trading desk, authorized products for the trading desk, main product types, and several questions about the trading desk. In addition, it would include data on the daily VaR-based measure for the trading desk calibrated at both the 99.0th and 97.5th percentile; the capital measure for non-modellable risk factors; the daily ES-based measure calibrated at the 97.5th percentile; the actual profit and loss; the hypothetical profit and loss; the risk-theoretical profit and loss; and the p-values of the profit or loss for each day.

The proposed reporting requirements would enable the agencies to identify changes to the risk profiles of banking organizations that use the models-based approach for market risk. Specifically, the collection of backtesting and PLA data included in the proposed reports would enable the agencies to determine the validity of a banking organization's internal models, and whether these models accurately account for the risk associated with exposure to price movements, changes in market structure, or market events that affect specific assets. If the agencies find these models not able to sufficiently capture market risks in these positions, under the proposed capital rule, the banking organization must then use the standardized approach for calculating its market risk capital requirements, thereby preventing divergence between a banking organization's risk profile and its capital position. The FFIEC 102a report would be filed 20 days after the end of each quarter. The proposed submission date is intended to provide the agencies with sufficient time to review the data and make a determination pursuant to the proposed capital rule as to whether a trading desk is eligible to use the internal models approach prior to the due date of the banking organization's other quarterly reports, including the FFIEC 102 and Call Report or FR Y–9C.[10] In the event that this review results in a change to a trading desk's eligibility, the banking organization would be able to make any necessary adjustments before the submission of its FFIEC 102 and Call Report or FR Y–9C, rather than having to revise and resubmit these reports. Furthermore, because the proposal requires a banking organization to calculate the data provided in the proposed report on a daily basis, the 20-day timeframe for submission is not expected to impose significantly increased compliance burden.

Further details of all the revisions described above can be found in the proposed Supervisory Market Risk Regulatory Report form and instructions, available on the FFIEC's website.[11]

III. Timing

The agencies propose to make the reporting changes to the Call Report, FFIEC 101, and FFIEC 102 (including its new sub-report the FFIEC 102a) effective for the third quarter of 2025 (September 30, 2025), consistent with the proposed July 1, 2025, effective date for the proposed capital rule. The agencies invite comment on any difficulties that institutions would expect to encounter in implementing the systems changes necessary to accommodate the proposed revisions to the Call Report, FFIEC 101, or FFIEC 102/102a, or the minimum time required to make systems changes to implement these changes. The specific wording of the captions for the new or revised data items discussed in this proposal and the numbering of these data items should be regarded as preliminary. If modifications are made to the proposed capital rule in an associated final rule, the agencies would modify the information collection revisions in this proposal to incorporate such changes, as applicable.

IV. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the

[10] The Call Report (for banks) is due 30 or 35 days after quarter end, while the FR Y–9C (for holding companies) generally is due 40 days after quarter end. The FFIEC 102 is due at the same time as the Call Report or FR Y–9C.

[11] *www.ffiec.gov/forms102.htm.*

information collections as they are proposed to be revised, 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 collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. At the end of the comment period for this notice, the FFIEC and the agencies will review any comments received to determine whether to modify the proposal in response to such comments.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 18, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–01532 Filed 1–25–24; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two persons and four vessels 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 and these vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley 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 Assistant Director 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 Action(s)

On January 12, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and the following vessels subject to U.S. jurisdiction are blocked under the relevant sanctions authority listed below.

Entities

1. GLOBAL TECH MARINE SERVICES INC, Trust Company Complex, Ajeltake Road, Majuro, Ajeltake Island 96960, Marshall Islands; 8th Floor, Arenco Tower, Sheikh Zayed Road, Dubai, United Arab Emirates; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 15 Dec 2020; Identification Number IMO 6197743; Business Registration Number 107145 (Marshall Islands) [SDGT] (Linked To: AL–JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism'' (E.O. 13224), 3 CFR, 2019 Comp., p. 356., as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions To Combat Terrorism,'' 84 FR 48041 (E.O. 13224, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, SA'ID AL–JAMAL (AL–JAMAL), a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. CIELO MARITIME LTD (a.k.a. CIELO MARITIME LIMITED), Room 6, 17th Floor, Wellborne Commercial Centre, 8, Java Road, North Point, Hong Kong, China; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 28 May 2023; Identification Number IMO 6410134; Registration Number 75354250 (Hong Kong) [SDGT] (Linked To: AL–JAMAL, Sa'id Ahmad Muhammad).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, AL–JAMAL, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Vessels

1. FORTUNE GALAXY (3E2520) Crude Oil Tanker Panama flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9257010; MMSI 352001505 (vessel) [SDGT] (Linked To: GLOBAL TECH MARINE SERVICES INC).

Identified pursuant to E.O. 13224, as amended, as property in which GLOBAL TECH MARINE SERVICES INC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

2. MOLECULE (TJMC241) Crude Oil Tanker Cameroon flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9209300; MMSI 613003214 (vessel) [SDGT] (Linked To: GLOBAL TECH MARINE SERVICES INC).

Identified pursuant to E.O. 13224, as amended, as property in which GLOBAL TECH MARINE SERVICES INC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

3. SINCERE 02 (3E4733) Oil Products Tanker Kiribati flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9226011; MMSI 352002984 (vessel) [SDGT] (Linked To: GLOBAL TECH MARINE SERVICES INC).

Identified pursuant to E.O. 13224, as amended, as property in which GLOBAL TECH MARINE SERVICES INC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

4. MEHLE (3E3893) Crude Oil Tanker Panama flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9191711; MMSI 352002537 (vessel) [SDGT] (Linked To: CIELO MARITIME LTD).

Identified pursuant to E.O. 13224, as amended, as property in which CIELO MARITIME LTD, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Dated: January 18, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–01556 Filed 1–25–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department''), Departmental Offices proposes to modify a current Treasury system of records titled, ''Department of the Treasury, Departmental Offices .214—DC Pensions Retirement Records'' System of Records. This system of records is a collection of information used by the Office of DC Pensions to administer certain District of Columbia (''District'') retirement plans, and the modification of the system of records notice is being published in order to clarify and update the description of the system of records.

DATES: Submit comments on or before February 26, 2024. The modification of the system of records notice will be applicable on February 26, 2024.

ADDRESSES: Written comments on this notice may be submitted electronically through the Federal Government eRulemaking portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Treasury to make the comments available to the public. Please note that comments submitted through *https://www.regulations.gov* will be public and can be viewed by members of the public. Comments can also be sent to the Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Attention: Revisions to Privacy Act Systems of Records.

In general, Treasury will post all comments to *https://www.regulations.gov* without change, including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. All comments received, including attachments and other supporting material, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Shalamar Barnes, 202–622–6173, the Office of DC Pensions, Departmental Offices, 1500 Pennsylvania Avenue NW, Washington, DC 20220. For privacy issues, please contact: the Deputy Assistant Secretary for Privacy, Transparency, and Records (202–622–5710), Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury (''Treasury''), Departmental Offices proposes to modify a current Treasury system of records titled, ''Department of the Treasury, Departmental Offices .214—DC Pensions Retirement Records System of Records.''

The proposed modification to the system of records makes the following substantive changes:

1. DO .214—DC Pensions Retirement Records, Notification Procedures, are being updated to reflect current procedures.

The system of records is collecting information under the Paperwork Reduction Act using the following forms:

- Health Benefits Registration Form (SF 2809) OMB No. 3206–0160 (expiration 7/31/2025)
- Life Insurance Election-FEGLI (SF 2817) OMB No. 3206–0230 (expiration 9/30/2024)
- Designation of Beneficiary Federal Group Life Insurance (FEGLI) Program (SF 2823) OMB No. 3206–0136 (expiration 12/31/2023)
- Withholding Certificate for Pension or Annuity Payments (W–4P) OMB No. 1545–0074 (expiration 12/31/2023)
- Withholding Certificate for Nonperiodic Payments and Eligible Rollover Distributions (W–4R) OMB No. 1545–0074 (expiration 12/31/2023)

Treasury will include this modified system in its inventory of record systems.

Below is the description of the Treasury, Departmental Offices .214—DC Pensions Retirement Records System of Records.

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury, DO .214—DC Pensions Retirement Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The records are maintained at the Office of DC Pensions, Department of the Treasury, in Washington, DC and the Bureau of the Fiscal Service in Parkersburg, WV, Kansas City, MO, and privately run secure storage facilities in various states.

SYSTEM MANAGER(S):

Director, Office of DC Pensions, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title XI, subtitle A, chapters 1 through 9, and subtitle C, chapter 4, subchapter B of the Balanced Budget Act of 1997, Public Law 105–33 (as amended); 31 U.S.C 321; and 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

These records may provide information on which to base determinations of (1) eligibility for, and computation of, benefit payments and refund of contribution payments; (2) direct deposit elections into a financial institution; (3) eligibility and premiums for health insurance and group life insurance; (4) withholding of income taxes; (5) under- or over-payments to recipients of a benefit payment (6) the recipient's ability to repay an overpayment; (7) the Federal payment made from the General Fund to the District of Columbia Teachers, Police Officers and Firefighters Federal Pension Fund and the District of Columbia Judicial Retirement and Survivors Annuity Fund; (8) the impact on benefit payments due to proposed Federal and/or District legislative changes; (9) the District or Federal liability for benefit payments to former District police officers, firefighters, teachers, and judges, including survivors, dependents, and beneficiaries who are receiving a Federal and/or District benefit; (10) whether someone committed fraud; and (11) the reliability of financial statements.

Consistent with Treasury's information sharing mission, information stored in DO .214—DC Retirement Records may be shared with other Treasury Bureaus, as well as appropriate Federal, State, local, Tribal, foreign, or international government agencies. This sharing will only occur after Treasury determines that the receiving Bureau or agency needs to know the information to carry out national security, law enforcement, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(A) Current and former District of Columbia police officers, firefighters, teachers, and judges.

(B) Surviving spouses, domestic partners, children, and/or dependent parents of current and former District of Columbia police officers, firefighters, teachers, or judges, as applicable.

(C) Former spouses and domestic partners of current and former District of Columbia police officers, firefighters, teachers, or judges, as applicable.

(D) Designated beneficiaries of items A, B, and C.

(E) Non-annuitant debtors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records include, but are not limited to, identifying information such as: name(s); contact information; mailing address; Social Security number; employee identification number; service beginning and end dates; annuity beginning and end dates; date of birth; sex; retirement plan; base pay; average base pay; final salary; type(s) of service and dates used to compute length of service; military base pay amount; purchase of service calculation and amount; and/or benefit payment amount(s). The types of records in the system may be:

(a) Documentation comprised of service history/credit, personnel data, retirement contributions, and/or a refund claim upon which a benefit payment(s) may be based.

(b) Medical records and supporting evidence for disability retirement applications and continued eligibility, and documentation regarding the acceptance or rejection of such applications.

(c) Records submitted by a surviving spouse, a domestic partner, a child(ren), and/or a dependent parent(s) in support of claims to a benefit payment(s).

(d) Records related to the withholding of income tax from a benefit payment(s).

(e) Retirement applications, including supporting documentation, and acceptance or denial of such applications.

(f) Death benefit applications, including supporting documentation, submitted by a surviving spouse, domestic partner, child(ren), former spouse, and/or beneficiary, that is required to determine eligibility for and receipt of a benefit payment(s), or denial of such claims.

(g) Documentation of enrollment and/or change in enrollment for health and life insurance benefits/eligibility.

(h) Designation(s) of a beneficiary(ies) for a life insurance benefit and/or an unpaid benefit payment.

(i) Court orders submitted by former spouses or domestic partners in support of claims to a benefit payment(s).

(j) Records relating to under- and/or over-payments of benefit payments.

(k) Records relating to the refunds of employee contributions.

(l) Records relating to child support orders, bankruptcies, tax levies, and garnishments.

(m) Records used to determine a total benefit payment and/or if the benefit payment is a District or Federal liability.

(n) Correspondence received from individuals covered by the system.

(o) Records relating to time served on behalf of a recognized labor organization.

(p) Records relating to benefit payment enrollment and/or change to enrollment for direct deposit to an individual's financial institution.

(q) Records relating to educational program enrollments of age 18 and older children of former police officers, firefighters, teachers, and judges.

(r) Records relating to the mental or physical disability condition of age 18 and older children of former police officers, firefighters, teachers, and judges.

(s) Records relating to a debtor's financial information, including financial disclosure forms, credit reports, tax filings, bank statements, and financial obligations.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual, or their representative, to whom the information pertains.

b. District pay, leave, and allowance records.

c. Health benefits and life insurance plan records maintained by the Office of Personnel Management, the District, and health and life insurance carriers.

d. Federal civilian retirement systems.

e. Military retired pay system records.

f. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.

g. Official personnel folders.

h. Physicians who have examined or treated the individual.

i. Surviving spouse, domestic partners, child(ren), former spouse(s), former domestic partner(s), and/or dependent parent(s) of the individual to whom the information pertains.

j. State courts or support enforcement agencies.

k. Credit bureaus and financial institutions.

l. Government Offices of the District of Columbia, including the District of Columbia Retirement Board.

m. The General Services Administration National Payroll Center.

n. The Department of the Interior Payroll Office.

o. Educational institutions.

p. Other components of the Department of the Treasury.

q. The Department of Justice.

r. Death reporting sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under the Privacy Act of 1974, 5 U.S.C. 552a(b) records and/or information or portions thereof maintained as part of this system may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: (1) To the United States Department of Justice (''DOJ''), for the purpose of representing or providing legal advice to the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(a) The Department or any component thereof;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where the Department of Justice or the Department has agreed to represent the employee; or

(d) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided that the disclosure is compatible with the purpose for which records were collected.

(2) To an appropriate Federal, State, local, Tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, background investigation, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DC Pension decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

(3) To a Congressional office in response to an inquiry made at the

request of the individual to whom the record pertains;

(4) To the National Archives and Records Administration Archivist (or Archivist's designee) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906;

(5) To appropriate agencies, entities, and persons when (1) the Department of the Treasury suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(6) To another Federal agency or Federal entity, when the Department of the Treasury determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

(7) To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding. In those cases where the Federal Government is not a party to the proceeding, records may not be disclosed unless the party complies with the requirements of 31 CFR 1.11;

(8) To disclose information to contractors, subcontractors, financial agents, grantees, auditors, actuaries, interns, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Department, or the District;

(9) To disclose information needed to adjudicate a claim for benefit payments or information needed to conduct an analytical study of benefits being paid under such programs as: Social Security Administration's Old Age, Survivor, and Disability Insurance and Medical Programs; military retired pay programs; and Federal civilian employee retirement programs (Civil Service Retirement System, Federal Employees Retirement System, and other Federal retirement systems);

(10) To disclose to the U.S. Office of Personnel Management (OPM) and to the District, information necessary to verify the election, declination, or waiver of basic and/or optional life insurance coverage, or coordinate with contract carriers the benefit provisions of such coverage;

(11) To disclose to health insurance carriers contracting with OPM to provide a health benefits plan under the Federal Employees Health Benefits Program or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts;

(12) To disclose health insurance enrollment information to OPM. OPM provides this enrollment information to their health care carriers who provide a health benefits plan under the Federal Employees Health Benefits Program, or health insurance carriers contracting with the District to provide a health benefits plan under the health benefits program for District employees, Social Security numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts;

(13) To disclose to certain people possibly entitled to a benefit payment information that is contained in the record of a deceased current or former police officer, firefighter, teacher, or judge to assist in properly determining the eligibility and amount of a benefit payment to a surviving recipient, or information that results from such determination;

(14) To disclose to any person who is legally responsible for the care of an individual to whom a record pertains, or who otherwise has an existing, facially-valid power of attorney, including care of an individual who is mentally incompetent or under other legal disability, information necessary to assure application or payment of benefits to which the individual may be entitled;

(15) To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an individual covered by the system needed for enforcing child support obligations of such individual;

(16) In connection with an examination ordered by the District or the Department under:

(a) Medical examination procedures; or

(b) Involuntary disability retirement procedures to disclose to the representative of an employee, notices, decisions, other written communications, or any other pertinent medical evidence other than medical evidence about which a prudent physician would hesitate to inform the individual; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative. The physician must be capable of explaining the contents of the medical record(s) to the individual and be willing to provide the entire record(s) to the individual;

(17) To disclose information to any source from which the Department seeks additional information that is relevant to a determination of an individual's eligibility for, or entitlement to, coverage under the applicable retirement, life insurance, and health benefits program, to the extent necessary to obtain the information requested;

(18) To disclose information to the Office of Management and Budget (OMB) at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19;

(19) To disclose to Federal, State, and local government agencies responsible for the collection of income taxes the information required to implement voluntary income tax withholdings from benefit payments;

(20) To disclose to the Social Security Administration the names and Social Security numbers of individuals covered by the system when necessary to determine (1) their vital status as shown in the Social Security Master Records and (2) whether retirees receiving benefit payments under the District's retirement plan for police officers and firefighters with post-1956 military service credit are eligible for or are receiving old age or survivors benefits under section 202 of the Social Security Act based upon their wages and self-employment income;

(21) To disclose to Federal, State, and local government agencies information to help eliminate fraud and abuse in a benefits program administered by a requesting Federal, State, or local government agency; to ensure

compliance with Federal, State, and local government tax obligations by persons receiving benefits payments; and/or to collect debts and overpayments owed to the requesting Federal, State, or local government agency;

(22) To disclose to a Federal agency, or a person or an organization under contract with a Federal agency to render collection services for a Federal agency as permitted by law, in response to a written request from the head of the agency or his designee, or from the debt collection contractor, data concerning an individual owing a debt to the Federal Government;

(23) To disclose, as permitted by law, information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce alimony or a child support obligation;

(24) To disclose information necessary to locate individuals who are owed money or property by a Federal, State, or local government agency, or by a financial institution or similar institution, to the government agency owing or otherwise responsible for the money or property (or its agent);

(25) To disclose information necessary in connection with the review of a disputed claim for health benefits to a health plan provider participating in the Federal Employees Health Benefits Program or the health benefits program for District employees, and to a program enrollee or covered family member or an enrollee or covered family member's authorized representative;

(26) To disclose information to another Federal agency for the purpose of effecting administrative or salary offset against a person employed by that agency, or who is receiving or eligible to receive benefit payments from the agency when the Department as a creditor has a claim against that person relating to benefit payments;

(27) To disclose information concerning delinquent debts relating to benefit payments to other Federal agencies for the purpose of barring delinquent debtors from obtaining Federal loans or loan insurance guarantees pursuant to 31 U.S.C. 3720B;

(28) To disclose to Federal, State, and local government agencies information used for collecting debts relating to benefit payments;

(29) To disclose to appropriate agencies, entities, and persons when:

(a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; or

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(30) To disclose to a former spouse information necessary to explain how his/her former spouse's benefit was computed;

(31) To disclose to a surviving spouse, domestic partner, surviving child, dependent parent, and/or legal guardian information necessary to explain how his/her survivor benefit was computed; and

(32) To disclose to a spouse, domestic partner, or dependent child (or court-appointed guardian thereof) of an individual covered by the system, upon request, whether the individual:

(a) changed his/her health insurance coverage and/or changed life insurance benefit enrollment, or

(b) received a lump-sum refund of his/her retirement contributions.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records in this system are stored in secure facilities in a locked drawer, behind a locked door. Electronic records are stored on magnetic disc, tape, digital media, and CD–ROM in secure facilities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by various combinations of name; date of birth; Social Security number; and/or an automatically assigned, system-generated number of the individual to whom they pertain.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with National Archives and Records Administration (NARA) retention schedule, N1–056–09–001, certain records will be destroyed after 115 years from the date of the former police officer's, firefighter's, teacher's or judge's birth; or 30 years after the date of his/her death, if no application for benefits is received. Under that retention schedule, if a survivor or former spouse receives a benefit payment, such record will be destroyed after his/her death. All other records covered by this system will be destroyed in accordance with approved Federal and Department guidelines. Paper records will be destroyed by shredding or burning. Records in electronic media will be electronically erased using NARA guidelines.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those who ''need-to-know'' the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 31 CFR part 1.36. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which bureau(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the Bureau or Freedom of Information Act staff determine which Treasury Bureau may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the Office of D.C. Pensions may not be able to conduct an effective search, and your

request may be denied due to lack of specificity or lack of compliance with applicable regulations.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on March 9, 2021, as the Department of the Treasury, Departmental Offices .214—DC Pensions Retirement Records.

[FR Doc. 2024–01567 Filed 1–25–24; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Agency Information Collection Activity: Application for United States Flag for Burial Purposes

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 26, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *mailto:nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0013'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0013'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority:

38 U.S.C. 2301(f)(1)).

Title: Application for United States Flag for Burial Purposes, (VA Form 27–2008).

OMB Control Number: 2900–0013.

Type of Review: Extension of a previously approved collection.

Abstract: VA Form 27–2008 is primarily used for VA compensation and pension programs that require claimants to file an application for benefits subsequent to the death of the Veteran to determine eligibility for the benefit. Collection of this information is conducted at the time the next-of-kin or friend of a deceased Veteran requests a burial flag. Without the information collected by VA Form 27–2008, entitlement to the benefit could not be determined.

Affected Public: Individuals and households.

Estimated Annual Burden: 535,026 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 753,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–01543 Filed 1–25–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Staff Sergeant Fox Suicide Prevention Grant Program Funding Opportunity

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of funding opportunity.

SUMMARY: VA is announcing the availability of funds for suicide prevention grants under the Staff Sergeant Fox Suicide Prevention Grant Program (SSG Fox SPGP). This Notice of Funding Opportunity (NOFO) contains information concerning SSG Fox SPGP; the grant application processes; and the amount of funding available. Awards made for suicide prevention grants will fund operations beginning on September 30, 2024. This is a 1-year award with the option to renew for an additional year, pending availability of funds and grantee performance.

DATES: Applications for suicide prevention services grants under SSG Fox SPGP must be received by 11:59 p.m. eastern time on April 26, 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 submission 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: For a Copy of the Application Package: Copies of the application can be downloaded from the SSG Fox SPGP website at *https://www.mentalhealth.va.gov/ssgfox-grants/.* Questions should be referred to SSG Fox SPGP by email at *VASSGFoxGrants@va.gov.* For detailed program information and requirements, see 38 CFR part 78.

Submission of Application Package: Applicants must submit applications electronically following instructions found at *https://www.mentalhealth.va.gov/ssgfox-grants/.* Applications may not be mailed, hand carried, or sent by facsimile. Applications must be received by SSG Fox SPGP by 11:59 p.m. eastern time on the application deadline date. 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.

Technical Assistance: Information regarding how to obtain technical assistance with the preparation of a new

or renewal suicide prevention grant application is available on the SPGP Program website at *https://www.mentalhealth.va.gov/ssgfox- grants/*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Foley, SSG Fox SPGP Director, Office of Mental Health and Suicide Prevention, by email at *VASSGFoxGrants@va.gov* or 202–502–0002.

SUPPLEMENTARY INFORMATION: *Funding Opportunity Title:* Staff Sergeant Fox Suicide Prevention Grant Program.

Announcement Type: Initial.

Funding Opportunity Number: VA–FOX–SP–FY2024.

Assistance Listing Number: 64.055.

I. Funding Opportunity Description

A. Assistance Listing Number: 64.005 Staff Sergeant Fox Suicide Prevention Grant Program.

B. Purpose: The purpose of SSG Fox SPGP is to reduce Veteran suicide by expanding suicide prevention programs for Veterans through the award of suicide prevention services grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families. SSG Fox SPGP builds upon VA's public health approach, which combines clinical and community-based interventions to prevent Veteran suicide for those inside and outside of VA health care. This grant program assists in further implementing a public health approach through these community efforts. The goal of these grants is to reduce Veteran suicide risk; improve baseline mental health status, well-being, and social support; and improve financial stability for eligible individuals and their families.

C. Funding Priorities: The principal goal of this NOFO is to seek entities that have demonstrated the ability to provide or coordinate suicide prevention services. Under Priority 1, VA will provide funding to eligible entities with existing SPGP awards. Grant funds will be awarded pursuant to 38 CFR 78.40.

Under Priority 2, applications will be accepted from new eligible entities. VA may prioritize the distribution of suicide prevention services grants under this Priority to (i) Rural communities; (ii) Tribal lands; (iii) Territories of the United States; (iv) medically underserved areas; (v) areas with a high number or percentage of minority Veterans or women Veterans; and (vi) areas with a high number or percentage of calls to the Veterans Crisis Line.

D. Definitions: The regulations for SSG Fox SPGP, published in the Federal Register on March 10, 2022, and codified in 38 CFR part 78, contain all detailed definitions and requirements pertaining to this program.

E. Eligible individuals. To be an eligible individual under this part, a person must be at risk of suicide and further meet the definition of eligible individual in section 201(q) of Public Law 116–171. Risk of suicide means exposure to, or the existence of, any of the following factors, to any degree, that increase the risk for suicidal ideation and/or behaviors:

(1) Health risk factors, including mental health challenges, substance use disorder, serious or chronic health conditions or pain, and traumatic brain injury.

(2) Environmental risk factors, including prolonged stress, stressful life events, unemployment, homelessness, recent loss, and legal or financial challenges.

(3) Historical risk factors, including previous suicide attempts, family history of suicide, and history of abuse, neglect, or trauma, including military sexual trauma.

F. Authority: Funding applied for under this NOFO is authorized by section 201 of the Commander John Scott Hannon Veterans Mental Health Improvement Act (Pub. L. 116–171). VA established and implemented this statutory authority for SSG Fox SPGP in 38 CFR part 78. Funds made available under this NOFO may be subject to the requirements of section 201 of the Act, 38 CFR part 78 and other applicable laws and regulations.

G. Approach: Suicide prevention services address the needs of eligible individuals and their families and are necessary for improving the mental health status and well-being and reducing the suicide risk of eligible individuals and their families. Applicants must include in their application that they will provide or coordinate the provision of the baseline mental health screening to all participants aged 18 and over. In addition, the application must include the proposed suicide prevention services to be provided or coordinated and the identified need for those services. Suicide prevention services include:

Outreach to identify and engage eligible individuals (and their families) at highest risk of suicide: Grantees providing or coordinating the provision of outreach must use their best efforts to ensure that eligible individuals, including those who are at highest risk of suicide or who are not receiving health care or other services furnished by VA, and their families are identified, engaged, and provided suicide prevention services. Based on the suicide risk and eligibility screening conducted by grantees, eligible individuals who should be considered at highest risk of suicide are those with a recent suicide attempt, an active plan or preparatory behavior for suicide or a recent hospitalization for suicidality. VA will provide access to the Columbia Suicide Severity Rating Scale to determine level of suicide risk. Outreach must include active liaison with local VA facilities; State, local or Tribal government (if any); and private agencies and organizations providing suicide prevention services to eligible individuals and their families in the area to be served by the grantee. This outreach can include, for example, local mental health and emergency or urgent care departments in local hospitals or clinics. Grantees are required to have a presence in the area to meet with individuals and organizations to create referral processes to the grantee and other community resources. VA requires that grantees coordinate with VA with respect to the provision of health care and other services to eligible individuals. VA expects that grantees will work with local VA facilities on a regular basis to coordinate care when needed for eligible individuals.

Baseline mental health screening: Grantees must provide or coordinate the provision of baseline mental health screenings to all participants aged 18 and over that the grantee serves at the time those services begin. This baseline mental health screening ensures that the participant's mental health needs can be properly determined and that suicide prevention services can be further tailored to meet the individual's needs. The baseline mental health screening must be provided using validated screening tools that assess suicide risk and mental and behavioral health conditions. VA will provide access to the Patient Health Questionnaire, Generalized Self-Efficacy Scale, Interpersonal Support Evaluation List, Socio Economic Status, and the Warwick Edinburgh Mental Well-Being Scale to grantees providing or coordinating the provision of baseline mental health screenings.

If an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening, the grantee must refer such individual to VA for care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee. It is important to note that this is only required for eligible individuals and not the family of eligible individuals.

If a participant other than an eligible individual is at risk of suicide or other mental or behavioral health condition pursuant to the baseline mental health screening, the grantee must refer such participant to appropriate health care services in the area. To the extent that the grantee can furnish such appropriate health care services on an ongoing basis and has available funding separate from funds provided under this grant program to do so, they would be able to furnish such services using those non-VA funds without being required to refer such participants to other services. As noted above, any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee.

When such referrals are made by grantees to VA, to the extent practicable, those referrals are required to be a ''warm hand-off'' to ensure that the eligible individual receives necessary care. This ''warm hand-off'' may include providing any necessary transportation to the nearest VA facility, assisting the eligible individual with scheduling an appointment with VA and any other similar activities that may be necessary to ensure the eligible individual receives necessary care in a timely manner.

Education: Suicide prevention education programs may be provided and coordinated to be provided to educate communities, Veterans, and families on how to identify those at risk of suicide, how and when to make referrals for care, and the types of suicide prevention resources available within the area. Education can include gatekeeper training, lethal means safety training, or specific education programs that assist with identification, assessment, or prevention of suicide. Gatekeeper training generally refers to programs that seek to develop individuals' knowledge, attitudes, and skills to prevent suicide. Gatekeeper training is an educational course designed to teach clinical and non-clinical professionals or gatekeepers the warning signs of a suicide crisis and how to respond and refer individuals for care. Education is important because learning the signs of suicide risk, how to reduce access to lethal means, and to connect those at risk of suicide to care can improve understanding of suicide and has the potential to reduce suicide.

Clinical services for emergency treatment: Clinical services may be provided or coordinated to be provided for emergency treatment of a participant. Emergency treatment means medical services, professional services, ambulance services, ancillary care and medication (including a short course of medication related to and necessary for the treatment of the emergency condition that is provided directly to or prescribed for the patient for use after the emergency condition is stabilized and the patient is discharged) was rendered in a medical emergency of such nature that a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health. This standard is met by an emergency medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of the immediate medical assistance to result in placing the health of the individual in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. It is important to note that emergency medical conditions include emergency mental health conditions.

If an eligible individual is furnished clinical services for emergency treatment and the grantee determines that the eligible individual requires ongoing services, the grantee must refer the eligible individual to VA for additional care. If the eligible individual refuses the grantee's referral to VA, any ongoing clinical services provided to the eligible individual by the grantee is at the expense of the grantee.

If a participant other than an eligible individual is furnished clinical services for emergency treatment and the grantee determines that the participant requires ongoing services, the grantee must refer the participant to appropriate health care services in the area for additional care. Except in instances in which a participant other than an eligible individual is furnished clinical services for emergency treatment, funds provided under this grant program may not be used to provide ongoing clinical services to such participants, and any ongoing clinical services provided to the participant by the grantee is at the expense of the grantee.

Case management services: Case management services are focused on suicide prevention to effectively assist participants at risk of suicide. Grantees providing or coordinating the provision of case management services must provide or coordinate the provision of such services that include, at a minimum: (a) performing a careful assessment of participants and developing and monitoring case plans in coordination with a formal assessment of suicide prevention services needed, including necessary follow-up activities, to ensure that the participant's needs are adequately addressed; (b) establishing linkages with appropriate agencies and service providers in the area to help participants obtain needed suicide prevention services; (c) providing referrals to participants and related activities (such as scheduling appointments for participants) to help participants obtain needed suicide prevention services, such as medical, social, and educational assistance or other suicide prevention services to address participants' identified needs and goals; (d) deciding how resources and services are allocated to participants on the basis of need; (e) educating participants on issues, including, but not limited to, suicide prevention services' availability and participant rights; and, (f) other activities, as approved by VA, to serve the comprehensive needs of participants for the purpose of reducing suicide risk.

Peer support services: The provision or coordination of the provision of peer support services by the grantee must be to help participants understand what resources and supports are available in their area for suicide prevention. Peer support services must be provided by Veterans trained in peer support with similar lived experiences related to suicide or mental health. Peer support specialists serve as role models and a resource to assist participants with their mental health recovery. Peer support specialists function as interdisciplinary team members, assisting physicians and other professional and non-professional personnel in a rehabilitation treatment program. Each grantee providing or coordinating the provision of peer support services must ensure that Veterans providing such services to participants meet the requirements of 38 U.S.C. 7402(b)(13) and meet qualification standards for appointment; or have completed peer support training, are pursuing credentials to meet the minimum qualification standards for appointment and are under the supervision of an individual who meets the necessary requirements of 38 U.S.C. 7402(b)(13).

Qualification standards include that the individual is (1) a Veteran who has recovered or is recovering from a mental health condition, and (2) certified by (i) a not-for-profit entity engaged in peer support specialist training as having met such criteria as the Secretary shall establish for a peer support specialist position, or (ii) a State as having satisfied relevant State requirements for a peer support specialist position. VA has further set forth qualifications for its peer support specialists in VA

Handbook 5005, Staffing (last updated November 8, 2023). See VA Handbook/Directive 5005. Grant funds may be used to provide education and training for employees of the grantee or the community partner who provide peer support services based on the terms set forth in the grant agreement.

Assistance in obtaining VA benefits: The provision of this assistance will provide grantees with additional means by which VA can notify participants of available VA benefits. Grantees assisting participants in obtaining VA benefits are required to aid participants in obtaining any benefits from VA for which the participants are eligible. Such benefits include but are not limited to: (1) vocational and rehabilitation counseling; (2) supportive services for homeless Veterans; (3) employment and training services; (4) educational assistance; and (5) health care services. Grantees are not permitted to represent participants before VA with respect to a claim for VA benefits unless they are recognized for that purpose pursuant to 38 U.S.C. 5902. Employees and members of grantees are not permitted to provide such representation unless the individual providing representation is accredited pursuant to 38 U.S.C. chapter 59.

Assistance in obtaining and coordinating other public benefits and assistance with emergent needs: Grantees assisting participants in obtaining and coordinating other public benefits or assisting with emergency needs are required to assist participants in obtaining and coordinating the provision of benefits that are being provided by Federal, State, local, or Tribal agencies, or any other grantee in the area served by the grantee by referring the participant to and coordinating with such entity. If a public benefit is not being provided by Federal, State, local, or Tribal agencies, or any other grantee in the area, the grantee is not required to obtain, coordinate, or provide such public benefit. Public benefits and assistance that a participant may be referred to include: health care services, which include (1) health insurance and (2) referrals to a governmental entity or grantee that provides (i) hospital care, nursing home care, outpatient care, mental health care, preventive care, habilitative and rehabilitative care, case management, respite care, home care, (ii) the training of any eligible individual's family in the care of any eligible individual, and (iii) the provision of pharmaceuticals, supplies, equipment, devices, appliances, and assistive technology. Grantees may also refer participants, as appropriate, to an entity that provides daily living services relating to the functions or tasks for self-care usually performed in the normal course of a day. Grantees may refer or provide directly personal financial planning services; transportation services; temporary income support services (including, among other services, food assistance and housing assistance); fiduciary and representative payee services; legal services to assist eligible individuals with issues that may contribute to the risk of suicide; and childcare. For additional details on these elements, applicants should consult 38 CFR 78.80.

Nontraditional and innovative approaches and treatment practices: Grantees may provide or coordinate the provision of nontraditional and innovative approaches and treatment, including but not limited to complementary or alternative interventions with some evidence for effectiveness of improving mental health or mitigating a risk factor for suicidal thoughts and behavior. Applicants may propose nontraditional and innovative approaches and treatment practices in their suicide prevention services grant applications. VA is exercising its authority by reserving the right to approve or disapprove nontraditional and innovative approaches and treatment practices to be provided or coordinated to be provided using funds authorized under SSG Fox SPGP.

Other services: Grantees may provide general suicide prevention assistance, which may include payment directly to a third party (and not to a participant), in an amount not to exceed $750 per participant during any 1-year period, beginning on the date that the grantee first submits a payment to a third party. Expenses that may be paid include expenses associated with gaining or keeping employment, such as uniforms, tools, certificates, and licenses, as well as expenses associated with lethal means safety and secure storage, such as gun locks and locked medication storage.

Applicants may propose additional suicide prevention services to be provided or coordinated to be provided. Examples of other services may include but are not limited to adaptive sports; equine assisted therapy; in-place or outdoor recreational therapy; substance use reduction programming; individual, group, or family counseling; and relationship coaching. VA reserves the right to approve or disapprove other suicide prevention services to be provided or coordinated to be provided using funds authorized under SSG Fox SPGP.

H. Guidance for the Use of VA Suicide Prevention Grant Funds: Consistent with section 201(o) of the Act, only grantees that are a State or local government or an Indian Tribe can use grant funds to enter into an agreement with a community partner under which the grantee may provide funds to the community partner for the provision of services to eligible individuals and their families. However, grantees may choose to enter into contracts for goods or services because in some situations, resources may be more readily available at a lower cost, or they may only be available from another party in the community.

Grantees may make payments directly to a third party on behalf of a participant for childcare, transportation, food, housing, and general suicide prevention assistance. Funds can be used to conduct outreach, educate, and connect with eligible individuals who are not engaged with VA services. Any outreach and education that is funded by SSG Fox SPGP should link directly back to a referral to the grantee's program for an opportunity to enroll the eligible individual in the program.

Funds must be used to screen for eligibility and suicide risk and enroll individuals in the program accordingly. Note that some individuals who come through the referral process may not engage in services. Grantees are expected to determine what referrals are appropriate for these individuals for follow-up services. Funds must be used to coordinate and provide suicide prevention services, by the grantee, based on screening and assessment, including clinical services for emergency treatment.

Funds must also be used to evaluate outcomes and effectiveness related to suicide prevention services. Prior to providing suicide prevention services, grantees must verify, document, and classify each participant's eligibility for suicide prevention services. Grantees must determine and document each participant's degree of risk of suicide using tools identified in the suicide prevention services grant agreement. Prior to services ending, grantees must provide or coordinate the provision of a mental health screening to all participants aged 18 or over they serve, when possible. This screening must be conducted with the same tools used to conduct the initial baseline mental health screening. Having this screening occur at the beginning and prior to services ending is important in evaluating the effectiveness of the services provided.

Grantees must document the suicide prevention services provided or

coordinated, how such services are provided or coordinated, the duration of the services provided or coordinated, and any goals for the provision or coordination of such services. If the eligible individual wishes to enroll in VA health care, the grantee must inform the eligible individual of a VA point of contact for assistance with enrollment.

For each participant aged 18 and over, grantees must develop and document an individualized plan with respect to the provision of suicide prevention services provided. This plan must be developed in consultation with the participant.

As outlined in 38 CFR 78.105, activities for which grantees will not be authorized to use suicide prevention services grant funds include direct cash assistance to participants and their families, those legal services prohibited pursuant to § 78.80(g), medical or dental care and medicines, except for clinical services for emergency treatment authorized pursuant to § 78.60, any activities considered illegal under Federal law, and any costs identified as unallowable per 2 CFR part 200, subpart E.

II. Award Information

A. Overview: This NOFO announces the availability of funds for suicide prevention grants under the SSG Fox SPGP.

B. Funding Priorities: The funding priorities for this NOFO are as follows:

Under Priority 1, current grantees may apply for a new grant award to continue to provide services within the scope of their current grant award; for purposes of 38 CFR part 78, these awards are considered renewals. Priority 1 applicants must apply using the renewal application. To be eligible for renewal of a suicide prevention grant, the Priority 1 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.

Under Priority 2, VA will accept applications from eligible entities that are not current grantees for funding consideration. Priority 2 applicants must apply using the application materials designated for new applicants.

C. Allocation of funds: Approximately $52,500,000 is available for grant awards under this NOFO. The maximum allowable grant size is $750,000 per year per eligibility entity.

(1) In response to this NOFO, only existing grantees can apply as Priority 1 applicants. New applicants apply under Priority 2. Priority 1 renewal grant requests cannot exceed the current award.

(2) If a Priority 1 applicant is not renewed, the existing grant will end on September 30, 2024.

(3) Priority 1 applicants may request an amount less than their current award; this will not be considered a substantial change to the program.

D. Grant Award Period: Grants awarded will be for a minimum of a 1-year period starting September 30, 2024. Awards may be extended for up to 1 additional year pending availability of funding and grantee performance.

III. Eligibility Information

A. Eligible Applicants: Eligible entity means an entity that meets the definition of an eligible entity in section 201(q) of the Act. Under section 201(q)(3) of the Act, an eligible entity must be one of the following:

(1) An incorporated private institution or foundation that (i) has no part of the net earnings of which incurs to the benefit of any member, founder, contributor or individual and (ii) has a governing board that would be responsible for the operation of the suicide prevention services provided under this section.

(2) A corporation wholly owned and controlled by an organization meeting the requirements of clauses (i) and (ii) in section III.A.(1) of this NOFO.

(3) An Indian Tribe.

(4) A community-based organization that can effectively network with local civic organizations, regional health systems, and other settings where eligible individuals and their families are likely to have contact.

(5) A State or local government. This may include, but not be limited to, nonprofit and private organizations such as those that are part of VA-Substance Abuse and Mental Health Services Administration's Governors' and Mayors' Challenge to prevent suicide among Service members, Veterans, and their families; universities; and city, county, State, and Tribal governments.

Demonstration of eligibility as detailed in the application includes submission of documents as outlined in Section IV of this NOFO.

Applicants applying for funding consideration under Priority 1 are existing grantees with grant awards scheduled to end by September 30, 2024. For Priority 1 and 2, eligible entities may apply for funding up to $750,000 per entity.

Applicants must be registered in the System for Award Management (SAM) located at *https://sam.gov,* provide a unique entity identifier, and continue to maintain an active SAM registration with current information as per 2 CFR part 200.

B. Cost Sharing and Matching: Applicants are not required to submit proposals that contain matching funds.

IV. Application Submission Information

A. Obtaining an Application Package: Initial and renewal applications are located at *https://www.mentalhealth.va.gov/ssgfox-grants/.* Any questions regarding this process should be referred to SSG Fox SPGP by email at *VASSGFoxGrants@va.gov.* For detailed program information and requirements, see 38 CFR part 78. Applicants must submit applications electronically following instructions found at *https://www.mentalhealth.va.gov/ssgfox-grants/.*

B. Submission Date and Time: Applications for suicide prevention grant under SSG Fox SPGP must be received by SSG Fox SPGP by 11:59 p.m. eastern time on April 26, 2024. Awards made for suicide prevention grants will fund operations beginning September 30, 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. Additionally, 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.

C. Other Submission Requirements:

(1) Existing grantees applying for Priority 1 grants may apply only as renewal applicants using the application designed for renewal grants.

(2) New applicants applying for Priority 2 grants may apply only as new applicants using the application designed for new grants.

(3) Submission of an incorrect, incomplete, inconsistent, unclear, or incorrectly formatted 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 78 and this NOFO. 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 sent by facsimile.

(4) In accordance with 2 CFR part 200, applicants may elect to charge a de minimis rate of 10% of modified total direct costs, which may be used indefinitely. No documentation is required to justify the 10% de minimis indirect cost rate. As described in 2 CFR 200.403, costs must be consistently charged as either indirect or direct costs but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(5) New applicants applying for Priority 2 grants may apply only as new applicants using the application designed for new grants.

D. Funding Restrictions: Funding will be awarded under this NOFO to existing grantees and new applicants (pending the availability of funds), beginning September 30, 2024. In addition to limitations set forth in law and regulation, the following restrictions apply:

(1) Funding cannot be used for construction.

(2) Funding cannot be used for vehicle purchases.

(3) Funding cannot be used for food for staff unless part of per diem travel.

(4) Funding cannot be used for pre-award costs.

V. Application Form and Content

A. Priority 1 (Renewals): VA's regulations at 38 CFR 78.35 describe the criteria that VA will use to score those grantees who are applying for renewal of a grant. Such criteria will assist with VA's review and evaluation of grantees to ensure that those grantees have successful existing programs using the previously awarded grant funds and that they have complied with the requirements of 38 CFR part 78 and section 201 of the Act. The criteria in 38 CFR 78.35 ensures that renewals of grants are awarded based on the grantee program's success, cost-effectiveness, and compliance with VA goals and requirements for this grant program.

The renewal application is organized into the following sections: Program Outcomes (maximum 55 points), Cost Effectiveness (maximum 20 points), Compliance with Program Goals and Requirements (25 maximum points), and Exhibits (no point values).

VA will use the following criteria to score grantees applying for renewal of a suicide prevention services grant:

(1) The success of the grantee's program.

(2) The cost-effectiveness of the grantee's program.

(3) The extent to which the grantee's program complies with SSG Fox SPGP goals and requirements.

The Exhibit section includes an applicant budget template, to be submitted in a Microsoft Excel File. The budget submission must include 1) Annual budget, attached as Exhibit I, containing a proposed quarterly budget for the renewal period, and 2) a Budget Narrative, which provides a description of each of the line items contained in the renewal application.

B. Priority 2 (New Applicants): VA's regulations at 38 CFR part 78.25 describe the criteria that VA will use to score new applications. Applicants must include all required documents in their application submission. Submission of an incorrect, incomplete, inconsistent, unclear, or incorrectly formatted application package will result in the application being rejected.

VA will use the following criteria to score new applicants who are applying for a suicide prevention services grant:

(1) The background, qualifications, experience, and past performance of the applicant and any community partners identified by the applicant in the suicide prevention services grant application.

(2) The applicant's program concept and suicide prevention services plan.

(3) The applicant's quality assurance and evaluation plan.

(4) The applicant's financial capability and plan.

(5) The applicant's area linkages and relations.

The Exhibit section includes an applicant budget template, to be submitted in a Microsoft Excel File. The budget submission must include: 1) annual budget, attached as Exhibit I, containing a proposed quarterly budget for the period, and 2) a budget narrative, which provides a description of each of the line items contained in the application.

VI. Review and Selection Process

A. Review Process: Based on the application criteria described above, grant applications will be divided into two groups: renewal applications and new applications. Suicide prevention services grant applications will be scored by a VA grant review committee. The grant review committee will be trained in understanding the program's goals, the requirements of the NOFO, VA's regulations for this program (38 CFR part 78) and the prescribed scoring rubric. Consistent with 38 CFR 78.40, if all available grant funds are awarded to renewal grants for existing grantees, no new applications will be awarded.

B. Application Selection: VA will only score applicants who meet the following threshold requirements:

(1) Application must be filed within the time period established in the NOFO, and any additional information or documentation requested by VA must be provided within the time frame established by VA.

(2) Application must be completed in all parts.

(3) Activities for which the suicide prevention services grant is requested must be eligible for funding.

(4) Applicant's proposed participants must be eligible to receive suicide prevention services.

(5) Applicant must agree to comply with the requirements of 38 CFR part 78.

(6) Applicant must not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit.

(7) Applicant must not be in default by failing to meet the requirements for any previous Federal assistance.

If these threshold requirements are not met, VA will deem applicants to be ineligible for further consideration.

Renewal applications must receive at least 60 points and at least 1 point under each of the criteria noted above in Section V of this NOFO. After selection of renewal applicants, if there is funding available, VA will score and rank all new applicants who score at least 60 cumulative points and receive at least one point under each of the criteria noted above in section V of this NOFO.

VA will utilize the ranked scores of new applicants as the primary basis for selection. The applicants will be ranked in order from highest to lowest. However, VA will give preference to applicants that have demonstrated the ability to provide or coordinate suicide prevention services. VA may prioritize the distribution of suicide prevention services grants to: (i) rural communities; (ii) Tribal lands; (iii) Territories of the United States; (iv) medically underserved areas; (v) areas with a high number or percentage of minority Veterans or women Veterans; and (vi) areas with a high number or percentage of calls to the Veterans Crisis Line.

To the extent practicable, VA will ensure that suicide prevention services grants are distributed to: (i) provide services in areas of the United States

that have experienced high rates of suicide by eligible individuals; (ii) applicants that can assist eligible individuals at risk of suicide who are not currently receiving health care furnished by VA; and (iii) ensure that suicide prevention services are provided in as many areas as possible.

VI. Award Administration Information

A. Award Notices: Although subject to change, VA expects to announce grant awards in the fourth quarter of fiscal year 2024. VA reserves the right in any year to make adjustments (*e.g.,* to funding levels) as needed within the intent of the NOFO based on a variety of factors, including the availability of funding. The initial announcement of awards will be made via a news release posted on VA's SSG Fox SPGP website at *https://www.mentalhealth.va.gov/ssgfox-grants.* The SSG Fox SPGP will concurrently notify both successful and unsuccessful applicants. Only a grant agreement with a VA signature is evidence of an award and is an authorizing document allowing costs to be incurred against a grant award. Other notices, letters or announcements are not authorizing documents. The grant agreement includes the terms and conditions of the award and must be signed by the entity and VA to be legally binding.

B. Administrative and National Policy Requirements: VA places great emphasis on responsibility and accountability. VA has procedures in place to monitor grants provided under SSG Fox SPGP. All applicants selected in response to this NOFO must agree to meet applicable inspection standards outlined in the grant agreement.

As SSG Fox SPGP grants cannot be used to fund treatment for mental health or substance use disorders, with the exception of clinical services for emergency treatment, applicants must provide evidence that they can provide access to such services to all program participants through formal and informal agreements with community providers.

C. Reporting: Applicants should be aware of the following:

(1) Upon execution of a suicide prevention services grant agreement with VA, grantees will have a liaison appointed by the SSG Fox SPGP Office who will provide oversight and monitor the use of funds to provide or coordinate suicide prevention services provided to participants.

(2) VA will require that grantees use validated tools and assessments to determine the effectiveness of the suicide prevention services furnished by VA. These include any measures and metrics developed and provided by VA for the purposes of measuring the effectiveness of the programming to be provided in improving mental health status and well-being and reducing suicide risk and suicide deaths of eligible individuals. Grantees will be required to use the VA Data Collection Tool for this purpose.

(3) Grantees must provide each participant with a satisfaction survey, which the participant can submit directly to VA, within 30 days of such participant's pending exit from the grantee's program. This is required to assist VA in evaluating grantees' performance and participants' satisfaction with the suicide prevention services they receive.

(4) Monitoring will also include the submittal of periodic and annual financial and performance reports by the grantee in accordance with 2 CFR part 200. Performance reports submitted quarterly or semi quarterly are due no later than 30 calendar days after the reporting period per 2 CFR 200.329(c)(1). Performance reports submitted annually are due no later than 90 calendar days after the reporting period pursuant to 2 CFR 200.329(c)(1). The grantee must submit their Final Report no later than 120 calendar days after the conclusion of the period of performance per 2 CFR 200.344(b). The grantee will be expected to demonstrate adherence to the grantee's proposed program concept, as described in the grantee's application.

(5) VA has the right, at all reasonable times, to make onsite visits to all grantee locations and have virtual meetings where a grantee is using suicide prevention services grant funds to review grantee accomplishments and management control systems and to provide such technical assistance as may be required.

D. Payment to Grantees: Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System. Grantees will have the ability to request payments as frequently as they choose. Grantees must have internal controls in place to ensure funding is available for the full duration of the grant period of performance, to the extent possible.

VII. Program Evaluation

The purpose of program evaluation is to evaluate the impact that participation in SSG Fox SPGP has on eligible individuals' financial stability, mental health status, well-being, suicide risk, and social support, as required by the Act.

As part of the national program evaluation, grantees must input data regularly in VA's web-based system. VA will ensure grantees have access to the data they need to gather and summarize program impacts and lessons learned on the implementation of the program evaluation criteria; performance indicators used for grantee selection and communication; and the criteria associated with the best outcomes for Veterans.

Training and technical assistance for program evaluation will be provided by VA, which will coordinate with subject matter experts to provide various trainings including the use of measures and metrics required for this program.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on January 11, 2024, 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. 2024–01531 Filed 1–25–24; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 2 and 99
Waste Emissions Charge for Petroleum and Natural Gas Systems; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 2 and 99

[EPA–HQ–OAR–2023–0434; FRL–10246.1–01–OAR]

RIN 2060–AW02

Waste Emissions Charge for Petroleum and Natural Gas Systems

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a regulation to implement the requirements of the Clean Air Act (CAA) as specified in the Methane Emissions Reduction Program of the Inflation Reduction Act. This program requires the EPA to impose and collect an annual charge on methane emissions that exceed specified waste emissions thresholds from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to the petroleum and natural gas systems source category requirements of the Greenhouse Gas Reporting Rule. The proposal would implement calculation procedures, flexibilities, and exemptions related to the waste emissions charge and proposes to establish confidentiality determinations for data elements included in waste emissions charge filings.

DATES:

Comments. Comments must be received on or before March 11, 2024. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before February 26, 2024.

Public hearing. The EPA will conduct a virtual public hearing on February 12, 2024. See **SUPPLEMENTARY INFORMATION** for information on registering for a public hearing.

ADDRESSES:

Comments. You may submit comments, identified by Docket ID No. EPA–HQ–OAR–2023–0434, 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, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

Hand Delivery or Courier (by scheduled appointment only): 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 proposed rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

The virtual hearing will be held using an online meeting platform, and the EPA has provided information on its website (*https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program-merp*) regarding how to register and access the hearing. Refer to the **SUPPLEMENTARY INFORMATION** section for additional information.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Mr. Shaun Ragnauth, Climate Change Division, Office of Atmospheric Programs (MC–6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9142; email address: *merp@epa.gov.*

World wide web (WWW). In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this proposed rule will be posted on the EPA's Inflation Reduction Act Methane Emissions Reduction Program website at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.*

SUPPLEMENTARY INFORMATION:

Written comments. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2023–0434, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to the EPA's docket at *https://www.regulations.gov* any information you consider to be confidential business information (CBI), 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). Commenters who would like the EPA to further consider in this rulemaking comments relevant to this rulemaking that they previously provided on any other rulemaking or request for information (*e.g.,* the Greenhouse Gas Reporting Rule: Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems, Docket ID No. EPA–HQ–OAR–2023–0234, the Methane Emissions Reduction Program Request for Information, Docket ID No. EPA–HQ–OAR–2022–0875, and the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, Docket ID No. EPA–HQ–OAR–2021–0317) must submit those comments to the EPA during this proposal's comment period. 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.

Participation in virtual public hearing. The EPA will begin pre-registering speakers for the hearing no later than one business day after publication in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program* or contact us by email at *merp@epa.gov.* The last day to pre-register to speak at the hearing will be February 7, 2024. On February 9, 2024, the EPA will post a general agenda that will list pre-registered speakers in approximate order at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.*

The EPA will make reasonable efforts to follow the schedule as closely as practicable on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony electronically (via email) by emailing it to *merp@epa.gov.* The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/inflation-reduction-act/methane-emissions-reduction-program.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us by email at *merp@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of an interpreter or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by February 2, 2024. The EPA may not be able to arrange accommodations without advanced notice.

Regulated entities. This is a proposed regulation. If finalized, the regulation would affect certain owners or operators of facilities in certain segments of the petroleum and natural gas systems industry that report more than 25,000 metric tons (mt) of carbon dioxide equivalent (CO_2e) pursuant to the requirements codified at 40 CFR part 98, subpart W (Petroleum and Natural Gas Systems) (hereafter referred to as ''part 98, subpart W''). Per the requirements of CAA section 136(d), the industry segments to which the waste emissions charge may apply are offshore petroleum and natural gas production, onshore petroleum and natural gas production, onshore natural gas processing, onshore gas transmission compression, underground natural gas storage, liquefied natural gas storage, liquefied natural gas import and export equipment, onshore petroleum and natural gas gathering and boosting, and onshore natural gas transmission pipeline. Regulated categories and entities include, but are not limited to, those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	North American Industry Classification System (NAICS)	Examples of affected facilities
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211120	Crude petroleum extraction.
	211130	Natural gas extraction.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this proposed action. This table lists the types of facilities that the EPA is now aware could potentially be affected by this action. Other types of facilities than those listed in the table could also be subject to reporting requirements. To determine whether you would be affected by this proposed action, you should carefully examine the applicability criteria found in 40 CFR part 99, subpart A (General Provisions). If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Acronyms and abbreviations. The following acronyms and abbreviations are used in this document.

AMLD Advanced Mobile Leak Detection
API American Petroleum Institute
ASTM American Society for Testing and Materials
BOEM Bureau of Ocean Energy Management
CAA Clean Air Act
CBI confidential business information
CEMS continuous emission monitoring system
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
CO_2e carbon dioxide equivalent
e-GGRT electronic Greenhouse Gas Reporting Tool
EF emission factor
EG emission guidelines
EIA Energy Information Administration
EPA U.S. Environmental Protection Agency
ET Eastern time
FAQ frequently asked question
FR Federal Register
GHG greenhouse gas
GHGRP Greenhouse Gas Reporting Program
GOR gas-to-oil ratio
GRI Gas Research Institute
GWP Global Warming Potential
IRA Inflation Reduction Act of 2022
ICR Information Collection Request
ISBN International Standard Book Number
ISO International Standards Organization
LDC local distribution company
LNG liquified natural gas
mmBtu million British thermal units
MMscf million standard cubic feet
mt metric tons
N_2O nitrous oxide
NAICS North American Industry Classification System
NGLs natural gas liquids
NIST National Institute of Standards and Technology
NSPS new source performance standards
OEM original equipment manufacturer
OGI optical gas imaging
OMB Office of Management and Budget
PBI proprietary business information
ppm parts per million
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RY reporting year
scfh standard cubic feet per hour
TSD technical support document
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
UNFCCC United Nations Framework Convention on Climate Change
VOC volatile organic compound
WEC waste emissions charge
WWW World Wide Web

Table of Contents

I. Background

A. How is this preamble organized?

The first section (section I.) of this preamble contains background information regarding the proposed rule. This section also discusses the EPA's legal authority under the Clean Air Act (CAA) to promulgate implementing regulations for the waste emissions charge, proposed to be codified at 40 CFR part 99 (hereafter referred to as ''part 99''). Section I. of the preamble also discusses the EPA's legal authority to make confidentiality determinations for new data elements included in waste emissions charge filings (WEC filings) required by the proposed rule. Section II. of this preamble contains detailed information on the proposed provisions necessary to implement CAA section 136(c) through (g), including exemptions. Section III. of this preamble describes the general requirements for the proposed rule. Section IV. of this preamble discusses the proposed confidentiality determinations for new data reporting elements for the proposed part 99 and also discusses confidentiality determinations for two data elements reported under part 98, subpart W. Section V. of this preamble discusses the impacts of the proposed part 99. Section VI. of this preamble describes the statutory and Executive order requirements applicable to this proposed action.

B. Executive Summary

In August 2022, Congress passed, and President Biden signed, the Inflation Reduction Act of 2022 (IRA) into law. Section 60113 of the IRA amended the CAA by adding section 136, ''Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems.'' CAA section 136(c) directs the Administrator of the EPA to impose and collect a ''Waste Emissions Charge'' on methane emissions that exceed statutorily specified waste emissions thresholds from owners or operators of applicable facilities. The waste emissions threshold is a facility-specific amount of metric tons of methane emissions calculated using the segment-specific methane intensity thresholds defined in CAA section 136(f)(1) through (3) and a facility's natural gas throughput (or oil throughput in certain circumstances). Facilities that have methane emissions below the threshold would not be required to pay the charge; facilities that have emissions above the threshold would be required to pay the charge. The waste emissions charge, or WEC, is specified in CAA section 136 to begin for emissions occurring in 2024 at $900 per metric ton of methane exceeding the threshold, increasing to $1,200 per metric ton of methane in 2025, and to $1,500 per metric ton of methane in 2026 and years after. The WEC only applies to the subset of a facility's emissions that are above the waste emissions threshold.

The WEC program applies to facilities that report more than 25,000 mt CO_2e of greenhouse gases emitted per year pursuant to the Greenhouse Gas Reporting Rule's requirements for the petroleum and natural gas systems source category (codified as 40 CFR part 98, subpart W).[1] An applicable facility, as defined in CAA section 136(d), is a facility within the following industry segments (as the following industry segments are defined in part 98, subpart W): onshore petroleum and natural gas production, offshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, onshore gas transmission compression, onshore natural gas transmission pipeline, underground natural gas storage, liquefied natural gas import and export equipment, and liquefied natural gas storage.[2] Congress structured the WEC so that it focuses on high-emitting oil and gas facilities (*i.e.,* those with emissions greater than 25,000 mt CO_2e of greenhouse gases emitted per year and that have a methane emissions intensity in excess of the statutory threshold).

CAA section 136 defines three important elements of the WEC program: (1) waste emissions thresholds; (2) netting of emissions across different facilities; and (3) exemptions for certain emissions and facilities. Facilities may owe a WEC obligation if their subpart W reported emissions exceed facility-specific waste emissions thresholds specified in CAA section 136(f).[3] Facility efficiency in terms of methane emissions per unit of production or throughput would have a large impact on the amount of the WEC owed, with more efficient facilities expected to have emissions falling below the specified thresholds.

Some facilities may have emissions that are below the waste emissions thresholds, and some facilities may have emissions above the thresholds. CAA section 136(f)(4) allows facilities under common ownership or control to net emissions across those facilities, which could result in a reduced total charge, or avoidance of the charge.[4]

In addition, there are three exemptions that may lower a facility's WEC or exempt the facility entirely from the charge. The first exemption, found in CAA section 136(f)(5), exempts from the charge emissions occurring at facilities in the onshore or offshore petroleum and natural gas production industry segments that are caused by eligible delays in environmental permitting of gathering or transmission infrastructure.[5] The second exemption, found in CAA section 136(f)(6), exempts from the charge, if certain conditions are met, those facilities that are subject to and in compliance with final methane

[1] 42 U.S.C. 7436(c) (''The Administrator shall impose and collect a charge on methane emissions that exceed an applicable waste emissions threshold under subsection (f) from an owner or operator of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to subpart W of part 98 of title 40, Code of Federal Regulations, regardless of the reporting threshold under that subpart.'').

[2] 42 U.S.C. 7436(d).

[3] 42 U.S.C. 7436(f)(1–3).

[4] 42 U.S.C. 7436(f)(4) (''In calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d).'').

[5] 42 U.S.C. 7436(f)(5). (''Charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay, as determined by the Administrator, in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation.'')

emissions requirements promulgated pursuant to CAA sections 111(b) and (d).[6] This exemption becomes available only if a determination is made by the Administrator that such final requirements are approved and in effect in all states with respect to the applicable facilities, and that the emissions reductions resulting from those final requirements will achieve equivalent or greater emission reductions as would have resulted from the EPA's proposed methane emissions requirements from 2021.[7] The third exemption, found in CAA section 136(f)(7), exempts from the charge reporting-year emissions from wells that are permanently shut in and plugged.[8] In this action, the EPA proposes specific requirements for eligibility for each of these exemptions.

The EPA proposes to require that the WEC would be quantified and paid through a WEC filing submitted no later than March 31 of each calendar year for methane emissions that occurred in the previous calendar year (subpart W reporting year). The WEC filing would include information relevant to calculating the WEC, such as identification of facilities included in netting, eligibility for exemptions from WEC, and supporting information necessary for the EPA to verify information submitted regarding exemptions.

The proposed provisions of part 99 under this rulemaking are described in further detail in sections II. and III. of this preamble.

C. Background and Related Actions

Congress designed the WEC to work in tandem with several related EPA programs. The WEC provides an incentive for the early adoption of methane emission reduction practices and technologies such as those that required under the Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (NSPS OOOOb/EG OOOOc), which Congress expected to be promulgated pursuant to CAA section 111. The sooner facilities adopt the methodologies and technologies required in those rules, the lower their assessed WEC; at full implementation of those rules, the EPA expects many of the WEC-affected facilities will be below the WEC emissions thresholds. To further support the overall goal of reducing methane emissions, CAA section 136(a) and (b) also provides $1.55 billion to, among other things, help finance the early adoption of emissions reduction methodologies and technologies and to support monitoring of methane emissions. More detailed background information on the impacts of methane on public health and welfare and the related regulatory activities is provided in section I.C.1. of this preamble.

1. How does methane affect public health and welfare?

Elevated concentrations of greenhouse gases (GHGs) including methane have been warming the planet, leading to changes in the Earth's climate that are occurring at a pace and in a way that threatens human health, society, and the natural environment. While the EPA is not statutorily required to make any particular scientific or factual findings regarding the impact of GHG emissions on public health and welfare in support of the proposed WEC, the EPA is providing in this section a brief scientific background on methane and climate change to offer additional context for this rulemaking and to help the public understand the environmental impacts of GHGs such as methane.

As a GHG, methane in the atmosphere absorbs terrestrial infrared radiation, which in turn contributes to increased global warming and continuing climate change, including increases in air and ocean temperatures, changes in precipitation patterns, retreating snow and ice, increasingly severe weather events, such as hurricanes of greater intensity, and sea level rise, among other impacts. Methane also contributes to climate change through chemical reactions in the atmosphere that produce tropospheric ozone and stratospheric water vapor. In 2022, atmospheric concentrations of methane increased by nearly 17 parts per billion (ppb) over 2021 levels to reach 1,912 ppb.[9] This was the largest increase since the start of the NOAA atmospheric record in 1984, with current concentrations now more than two and a half times larger than the preindustrial level.[10] Methane is responsible for about one third of all warming resulting from human emissions of well-mixed GHGs,[11] and due to its high radiative efficiency compared to carbon dioxide, methane mitigation is one of the best opportunities for reducing near-term warming.

Major scientific assessments continue to be released that further advance our understanding of the climate system and the impacts that methane and other GHGs have on public health and welfare both for current and future generations. According to the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report, ''it is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.'' [12] Recent EPA modeling efforts [13] have also shown that impacts from these changes are projected to vary regionally within the U.S. For example, large damages are projected from sea level rise in the Southeast, wildfire smoke in the Western U.S., and impacts to agricultural crops and rail and road infrastructure in the Northern Plains. Scientific assessments, EPA analyses, and updated observations and projections document the rapid rate of current and future climate change and the potential range impacts both

[6] 42 U.S.C. 7436(f)(6) (''Charges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 7411 of this title upon a determination by the Administrator that—(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 7411 of this title have been approved and are in effect in all States with respect to the applicable facilities; and (ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the proposed rule of the Administrator entitled ''Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review'' (86 FR 63110 (November 15, 2021)), if such rule had been finalized and implemented.'').

[7] *Id.*

[8] 42 U.S.C. 7436(f)(7). (' Charges shall not be imposed with respect to the emissions rate from any well that has been permanently shut-in and plugged in the previous year in accordance with all applicable closure requirements, as determined by the Administrator.'')

[9] NOAA, *https://gml.noaa.gov/webdata/ccgg/trends/ch4/ch4_annmean_gl.txt.*

[10] Blunden, J. and T. Boyer, Eds., 2022: ''State of the Climate in 2021.'' *Bull. Amer. Meteor. Soc.,* 103 (8), Si–S465, *https://doi.org/10.1175/2022BAMSStateoftheClimate.1,* 103 (8), Si–S465, *https://doi.org/10.1175/2022BAMSStateoftheClimate.1.*

[11] IPCC, 2021: *Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 3–32, doi:10.1017/9781009157896.001.

[12] *Id.*

[13] (1) EPA. 2021. *Technical Documentation on the Framework for Evaluating Damages and Impacts (FrEDI).* U.S. Environmental Protection Agency, EPA 430–R–21–004.

(2) Hartin C., E.E. McDuffie, K. Novia, M. Sarofim, B. Parthum, J. Martinich, S. Barr, J. Neumann, J. Willwerth, & A. Fawcett. Advancing the estimation of future climate impacts within the United States. EGUsphere doi: 10.5194/egusphere–2023–114, 2023.

globally and in the United States,[14] presenting clear support regarding the current and future dangers of climate change and the importance of GHG emissions mitigation.

2. Related Actions

As mandated by CAA section 136(c) and (d), the applicability of the WEC is based upon the quantity of metric tons of CO_2e emitted per year pursuant to the requirements of subpart W. Further, CAA section 136(e) requires that the WEC amount be calculated based upon methane emissions reported pursuant to subpart W. As a result, this proposed action builds upon previous subpart W rulemakings.

On August 1, 2023, the EPA proposed revisions to subpart W consistent with the authority and directives set forth in CAA section 136(h) as well as the EPA's authority under CAA section 114 (88 FR 50282) (hereafter referred to as the ''2023 Subpart W Proposal''). In that rulemaking, the EPA proposed revisions to require reporting of additional emissions or emissions sources to address potential gaps in the total methane emissions reported by facilities to subpart W. For example, these proposed revisions would add a new emissions source, referred to as ''other large release events,'' to capture large emission events that are not accurately accounted for using existing methods in subpart W. The EPA also proposed revisions to add or revise existing calculation methodologies to improve the accuracy of reported emissions, incorporate additional empirical data, and allow owners and operators of applicable facilities to submit empirical emissions data that could appropriately demonstrate the extent to which a charge is owed in implementation of CAA section 136, as directed by CAA section 136(h). The EPA also proposed revisions to existing reporting requirements to collect data that would improve verification of reported data, ensure accurate reporting of emissions, and improve the transparency of reported data. For clarity of discussion within this preamble, unless otherwise stated, references to provisions of subpart W (*i.e.,* 40 CFR 98.230 through 98.238) reflect the language as proposed in the 2023 Subpart W Proposal. The EPA's intention in this proposed rulemaking is that the final WEC rule would update the proposed cross-references to subpart W to be consistent with the final Subpart W rule resulting from the 2023 Subpart W Proposal.

Under the Greenhouse Gas Reporting Program, the EPA also recently issued a supplemental proposal to a 2022 proposed rule (88 FR 32852, May 22, 2023), which included proposed updates to the General Provisions of the Greenhouse Gas Reporting Rule to reflect revised global warming potentials (GWPs), proposed reporting of GHG data from additional sectors (*i.e.,* non-subpart W sectors), and proposed revisions to source categories other than subpart W that would improve implementation of the Greenhouse Gas Reporting Rule. The proposed revision to the GWP of methane (from 25 to 28) is expected to lead to a small increase in the number of facilities that exceed the subpart W 25,000 mt CO_2e threshold and thus become subject to the proposed part 99 requirements. This supplemental proposed rule is not expected to otherwise impact subpart W reporting requirements as they pertain to the applicability or implementation of the proposed part 99 requirements.

In addition, on November 15, 2021 (86 FR 63110), the EPA proposed under CAA section 111(b) standards of performance regulating emissions of methane and volatile organic compounds (VOCs) for certain new, reconstructed, and modified sources in the oil and natural gas source category (proposed as 40 CFR part 60, subpart OOOOb) (hereafter referred to as ''NSPS OOOOb''), as well as emissions guidelines regulating emissions of methane under CAA section 111(d) for certain existing oil and natural gas sources (proposed as 40 CFR part 60, subpart OOOOc) (hereafter referred to as ''EG OOOOc''). The November 15, 2021 proposal (covering both NSPS OOOOb and EG OOOOc)—and which Congress explicitly referred to in section 136—will be referred to hereafter as the ''NSPS OOOOb/EG OOOOc 2021 Proposal.'' The NSPS OOOOb/EG OOOOc 2021 Proposal sought to strengthen standards of performance previously in effect under section 111(b) of the CAA for new, modified and reconstructed oil and natural gas sources, and to establish emissions guidelines under section 111(d) of the CAA for states to follow in developing plans to limit methane emissions from existing oil and natural gas sources.

On December 6, 2022, the EPA issued a supplemental proposal to update, strengthen and expand upon the NSPS OOOOb/EG OOOOc 2021 Proposal (87 FR 74702). The December 6, 2022 supplemental proposal will be referred to hereafter as ''NSPS OOOOb/EG OOOOc 2022 Supplemental Proposal.'' This supplemental proposal modified certain standards proposed in the NSPS OOOOb/EG OOOOc 2021 Proposal and added proposed requirements for sources not previously covered. Among other things, the supplemental proposal sought to: ensure that all well sites are routinely monitored for leaks, with requirements based on the type and amount of equipment on site; encourage the deployment of innovative and advanced monitoring technologies by establishing performance requirements that can be met by a broader array of technologies; prevent leaks from abandoned and unplugged wells by requiring documentation that well sites are properly shut-in and plugged before monitoring is allowed to end; leverage qualified expert monitoring to identify ''super-emitters'' for prompt mitigation; and strengthen requirements for flares.

On December 2, 2023, in an action titled, ''Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review,'' the EPA finalized these two rules to reduce air emissions from the Crude Oil and Natural Gas source category under section 111 of the Clean Air Act. First, the EPA finalized NSPS OOOOb regulating GHG (in the form of a limitation on emissions of methane) and VOCs emissions for the Crude Oil and Natural Gas source category pursuant to CAA section 111(b)(1)(B) (hereafter, ''NSPS OOOOb''). Second, the EPA finalized presumptive standards in EG OOOOc to limit GHG emissions (in the form of methane limitations) from designated facilities in the Crude Oil and Natural Gas source category, as well as requirements under the CAA section 111(d) for states to follow in developing, submitting, and implementing state plans to establish performance standards (hereafter, ''EG OOOOc'').[15]

The NSPS OOOOb/EG OOOOc 2021 Proposal and Final NSPS OOOOb/EG OOOOc are relevant to this WEC

[14] (1) USGCRP, 2018: *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II* [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018. Available at *https://nca2018.globalchange.gov.*

(2) IPCC, 2021: *Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu and B. Zhou (eds.)]. Cambridge University Press.

[15] In this action, the EPA also finalized several related actions stemming from the joint resolution of Congress, adopted on June 30, 2021, under the CRA, disapproving the 2020 Policy Rule, and also finalized a protocol under the general provisions for use of Optical Gas Imaging.

proposal in two ways: first, WEC applicable facilities containing CAA section 111(b) and (d) facilities that are in compliance with the applicable standards are likely to have emissions below the thresholds specified in section II.B. of this preamble due to mitigation resulting from meeting the methane emissions requirements of NSPS OOOOb or EG OOOOc-implementing state and Federal plans, and therefore would not be expected to incur charges under the WEC program; and second, compliance with applicable standards (if certain criteria are met) may exempt facilities from the WEC under the regulatory compliance exemption outlined at CAA section 136(f)(6) (discussed in section II.D.2. of this preamble). As a part of the NSPS OOOOb/EG OOOOc 2022 Supplemental Proposal, the EPA requested comment on the criteria and approaches that the Administrator should consider in making the CAA section 136(f)(6)(A)(ii) equivalency determination, which is discussed at section II.D.2. of this preamble.

The EPA also opened a non-regulatory docket on November 4, 2022 and issued a Request for Information (RFI) seeking public input to inform program design related to CAA section 136.[16] As part of this request, the EPA sought input on issues that should be considered related to implementation of the WEC. The comment period closed on January 18, 2023.

The 2023 Subpart W Proposal, the NSPS OOOOb/EG OOOOc 2021 Proposal, the NSPS OOOOb/EG OOOOc 2022 Supplemental Proposal, and the November 2022 request for information are relevant to this proposal. While the EPA has reviewed or will review relevant comments submitted as part of the rulemaking actions and request for information, the EPA is not obligated to respond to those comments in this action since the comment solicitations did not accompany a proposal regarding the WEC. Commenters who would like the EPA to formally consider in this rulemaking any relevant comments previously submitted must resubmit those comments to the EPA during this proposal's comment period.

In addition to the WEC requirement, and the related revisions to subpart W to facilitate accuracy of reporting and charge calculation, as noted in section I.C. of this preamble, CAA sections 136(a) and (b) provide $1.55 billion for the Methane Emissions Reduction Program, including for incentives for methane mitigation and monitoring. The EPA is partnering with the U.S. Department of Energy and National Energy Technology Laboratory to provide financial assistance for monitoring and reducing methane emissions from the oil and gas sector, as well as technical assistance to help implement solutions for monitoring and reducing methane emissions. As designed by Congress, these incentives were intended to complement the regulatory programs and to help facilitate the transition to a more efficient petroleum and natural gas industry.

D. Legal Authority

The EPA is proposing this rule under its newly established authority provided in CAA section 136. As noted in section I.B. of this preamble, the IRA added CAA section 136, ''Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems,'' which requires that the EPA impose and collect an annual specified charge on methane emissions that exceed an applicable waste emissions threshold from an owner or operator of an applicable facility that reports more than 25,000 mt CO_2e of greenhouse gases emitted per year pursuant to subpart W of the GHGRP. Under CAA section 136, an ''applicable facility'' is a facility within nine of the ten industry segments subject to subpart W, as currently defined in 40 CFR 98.230 (excluding natural gas distribution).

The EPA is also proposing elements of this rule under its existing CAA authority provided in CAA section 114, as well as CAA section 301. CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide other information the Administrator requests for the purposes of carrying out any provision of the CAA (except for a provision of title II with respect to manufacturers of new motor vehicles or new motor vehicle engines). Thus, CAA section 114(a)(1) additionally provides the EPA broad authority to require the information that would be required by this proposed rule because the information is relevant for carrying out CAA section 136. Additionally, CAA section 301(a)(1) provides that the EPA is authorized to prescribe such regulations ''as are necessary to carry out [its] functions under [the CAA].''

The Administrator has determined that this action is subject to the provisions of section 307(d) of the CAA. Section 307(d) contains a set of procedures relating to the issuance and review of certain CAA rules.

In addition, pursuant to sections 114, 301, and 307 of the CAA, the EPA is publishing proposed confidentiality determinations for the new data elements required by this proposed regulation.

II. Requirements To Implement the Waste Emissions Charge

This section summarizes the EPA's proposed approach to calculating WEC, including how WEC would be calculated at the facility level, how netting of emissions from facilities under common ownership or control would be applied, the EPA's interpretation of common ownership or control, and how the exemptions established in CAA section 136(f) would be implemented.

A. Proposed Definitions To Support WEC Implementation

In accordance with CAA section 136(d), applicable facilities under part 99 are those facilities within certain industry segments as defined under part 98, subpart W. Thus, we are proposing several definitions within the general provisions of 40 CFR 99.2. First, as the statute specifies, we are proposing a definition of ''applicable facility'' to mean a facility within one or more of the following industry segments: onshore petroleum and natural gas production, offshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, onshore natural gas transmission compression, onshore natural gas transmission pipeline, underground natural gas storage, LNG import and export equipment, or LNG storage, as those industry segments are defined in 40 CFR 98.230 of subpart W.[17] A single reporting facility under part 98, subpart W, typically consists of operations within a single industry segment. However, for certain industry segments a single reporting facility may represent operations in two or more industry segments. Industry segments that potentially may exist within the same reporting facility are onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, LNG import and export equipment, and LNG storage. To accommodate for such facilities, we are proposing within the definition of ''applicable facility'' that such operations would be considered a single applicable facility under part 99.

[16] Docket ID No. EPA–HQ–OAR–2022–0875.

[17] *See* 42 U.S.C. 7436(d).

We are also proposing a definition of ''WEC applicable facility'' in 40 CFR 99.2, which would mean an applicable facility for which the owner or operator of the subpart W reporting facility reported GHG emissions under subpart W of more than 25,000 mt CO_2e—the amount set in the statute. In cases where a subpart W facility reports under two or more of the industry segments listed in the previous paragraph, the EPA proposes that the 25,000 mt CO_2e threshold would be evaluated based on the total facility GHG emissions reported to subpart W across all of the industry segments (*i.e.,* the facility's total subpart W GHGs). As discussed in section II.B.1. of this preamble, the waste emissions threshold is the facility-specific threshold, based upon an industry segment-specific methane intensity threshold, above which the EPA must impose and collect the WEC. For the purposes of determining the waste emissions threshold for a WEC applicable facility that operates within multiple industry segments, the EPA proposes that each industry segment would be assessed separately (*i.e.,* using industry segment-specific throughput and methane intensity threshold) and then summed together to determine the waste emissions threshold for the facility. The EPA proposes that this approach would be used in all cases where a WEC applicable facility contains equipment in multiple subpart W industry segments.

The EPA requests comment on an alternative definition of WEC applicable facility as it applies to subpart W facilities that report under two or more industry segments. This alternative approach would assess these facilities against the 25,000 mt CO_2e applicability threshold using the CO_2e reported under subpart W for each individual segment at the facility rather than the total facility subpart W CO_2e reported across all segments. CAA section 136(d) defines an applicable facility as one ''within'' the nine industry segments subject to the WEC and does not specify that an applicable facility is in one and only one industry segment. The EPA understands this to mean that an applicable facility constitutes an entire subpart W facility, including those that report under more than one segment. Thus, based on the statutory text, the EPA proposes to assess WEC applicability based on the entire subpart W facility's emissions. Based on historic subpart W data, no more than two dozen facilities report data for multiple segments, and when total subpart W CO_2e is summed across all segments at these facilities, almost all of these facilities remain below the 25,000 mt CO_2e threshold. Historic data also show that the industry segments (onshore natural gas processing, onshore natural gas transmission compression, and underground natural gas storage) located at these facilities generally have methane emissions below the waste emissions thresholds. The proposed approach of using total subpart W facility CO_2e for determining WEC applicability therefore would not result in a significant number of facilities being regulated under WEC compared to an approach that assessed applicability using subpart W CO_2e for each individual industry segment at a facility. Based on historic data, the EPA does not expect the very small number of facilities with operations in multiple subpart W segments that could be subject to the WEC under the proposed approach to experience a substantially different financial impact under the alternative approach.

We are also proposing a definition for ''WEC applicable emissions'' in 40 CFR 99.2, which would mean the annual methane emissions, as calculated using equations specified in part 99, from a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the facility after consideration of any applicable exemptions. The proposed calculation methodology for WEC applicable emissions is addressed in section II.B.2. of this preamble. We are also proposing a definition for ''facility applicable emissions'' in 40 CFR 99.2 which would mean the annual methane emissions, as calculated using equations specified in part 99, from a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the facility prior to consideration of any applicable exemptions.

The proposed provisions of this part would apply to WEC obligated parties and WEC applicable facilities. In addition to the proposed definition for WEC applicable facility discussed earlier in this section, we are proposing a definition for the term WEC obligated party in 40 CFR 99.2. The term WEC obligated party refers to the owners or operators of one or more WEC applicable facilities. For WEC applicable facilities that have more than one owner or operator, we are proposing that the WEC obligated party is an owner or operator selected by a binding agreement among the owners and operators of the WEC applicable facility. The EPA anticipates that such an agreement would be similar to those used in carrying out 40 CFR 98.4(b) under the GHGRP.

For the purposes of submitting the WEC filing, we are proposing that the WEC obligated party's WEC applicable facilities are the WEC applicable facilities for which it is the owner or operator (including through binding agreement as noted above), as of December 31 of each reporting year. Under the proposed approach, the WEC obligated party would be responsible for any WEC obligation from facilities for which it was the facility owner or operator as of December 31 of the reporting year. The EPA recognizes that facilities may be acquired or divested at any time in the year, and that under the proposed approach the year-end owner or operator would be responsible for data and any corresponding WEC obligation for the entire reporting year. The EPA believes that this approach is both reasonable and necessary for implementation of the WEC program. First, subpart W data reporting uses the same approach; the facility owner or operator as of December 31 is responsible for emissions for the entire year. Because the subpart W data is inextricably linked to the WEC filing, it would be inappropriate to have different facility owners or operators under each regulation. Specifically, different owners or operators for the same facility under subpart W and the WEC program could lead to challenges for WEC filings and associated data verification, and increase industry burden by requiring significant coordination between different companies. Second, subpart W data are reported on an annual basis, and there is no means by which methane emissions could be accurately allocated across multiple owners or operators in a single year. For example, emissions could not be pro-rated based on time of ownership over the reporting year because emissions do not occur uniformly over time, and emissions from certain sources cannot be linked to specific times. Similarly, there is not a direct relationship between methane emissions and oil and natural gas production, so temporal data on hydrocarbon production could not be used to accurately allocate emissions. The EPA therefore believes it would be neither practical nor accurate for the reporting responsibility and potential WEC obligation for a single facility to be split among multiple WEC obligated parties.

The EPA also recognizes that a facility's owner or operator, and thus its WEC obligated party, may change between December 31 and March 31. In such situations, under the proposed approach the WEC obligated party associated with a facility as of December

31 would remain responsible for accounting for that facility in its WEC filing and be responsible for any WEC obligation associated with that facility.

The EPA invites comments on these proposed definitions and whether additional definitions would help with the implementation of the WEC. The EPA requests comment on the proposed definition of WEC obligated party being responsible for all facilities for which it was the facility owner or operator as of December 31, regardless of when in the reporting year it became a facility's owner or operator. The EPA requests comment on alternative definitions of WEC obligated party, including those that would allocate facility subpart W data to multiple WEC obligated parties and a definition that would place the WEC obligation and reporting requirements on the WEC obligated party that was a facility's owner or operator at the time of the WEC filing (*i.e.,* as of March 31 of the year following the reporting year rather than December 31 of the reporting year). For alternative definitions that would allocate subpart W data, the EPA requests comment on potential methodologies that would accurately split the annual subpart W data across multiple WEC obligated parties.

B. Waste Emissions Thresholds

The CAA establishes a waste emissions threshold that is defined in terms of industry segment-specific methane intensity thresholds applicable to certain facilities that report GHG emissions under subpart W of the GHGRP. The industry segment-specific methane intensity thresholds specified in CAA 136(f) and listed in Table 2 of this preamble are based on a rate of methane emissions per amount of natural gas or oil sent to sale from or through a facility. The industry segment-specific methane intensity thresholds are generally defined in terms of a percentage of throughput (*e.g.,* 0.002 percent of natural gas sent to sale). However, since the WEC is based on metric tons of methane (*e.g.,* $900/metric ton) that exceed the threshold, for the purposes of calculating the number of metric tons that are subject to the WEC, we are proposing to calculate the facility waste emissions thresholds in metric tons of methane.

For the onshore and offshore petroleum and natural gas production industry segments, CAA section 136(f) differentiates based on whether the facility is sending natural gas to sale or only sending oil to sale, and if the facility does not send natural gas to sale, the threshold is based on methane emissions per amount of oil sent to sale. For facilities that are not in the onshore or offshore production industry segments, the industry segment-specific methane intensity thresholds are based on the amount of natural gas sent to sale from or through the facility. The industry segment-specific methane intensity thresholds are applied to the natural gas or petroleum throughput attributable to that industry segment to calculate facility-specific waste emissions thresholds. See Table 2 for an overview of how the waste emissions thresholds are calculated. Facility waste emissions thresholds are compared to reported methane emissions; facilities with methane emissions that exceed the waste emissions threshold may be subject to the WEC. For WEC applicable facilities under common ownership or control of a single WEC obligated party, the WEC applicable emissions for each facility are summed to calculate the net emissions for that WEC obligated party.

Subpart W requires reporting of natural gas throughput by thousand standard cubic feet, oil by barrels, and methane by metric ton. As a practical matter, since the WEC is based on a dollar per metric ton of methane, the waste emissions thresholds must generally be converted into metric tons of methane for comparison against reported methane, generally by multiplying the thresholds by the density of methane.

TABLE 2—INDUSTRY SEGMENT THROUGHPUT METRICS AND METHANE INTENSITIES

Industry segment	Throughput metric [a]	Industry segment-specific methane intensity
Onshore petroleum and natural gas production.	The quantity of natural gas produced from producing wells that is sent to sale in the calendar year, in thousand standard cubic feet; or the quantity of crude oil produced from producing wells that is sent to sale in the calendar year, in barrels, if facility sends no natural gas to sale.	0.20 percent of natural gas sent to sale from facility; or 10 metric tons of methane per million barrels of oil sent to sale from facility, if facility sends no natural gas to sale.
Offshore petroleum and natural gas production.		
Onshore petroleum and natural gas gathering and boosting.	The quantity of natural gas transported through the facility to a downstream endpoint such as a natural gas processing facility, a natural gas transmission pipeline, a natural gas distribution pipeline, a storage facility, or another gathering and boosting facility in the calendar year, in thousand standard cubic feet.	0.05 percent of natural gas sent to sale from or through facility.
Onshore natural gas processing	The quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year, in thousand standard cubic feet.	
Onshore natural gas transmission compression.	The quantity of natural gas transported through the compressor station in the calendar year, in thousand standard cubic feet.	0.11 percent of natural gas sent to sale from or through facility.
Onshore natural gas transmission pipeline.	The quantity of natural gas transported through the facility and transferred to third parties such as LDCs or other transmission pipelines in the calendar year, in thousand standard cubic feet.	
Underground natural gas storage	The quantity of natural gas withdrawn from storage and sent to sale in the calendar year, in thousand standard cubic feet.	
LNG import and export equipment ..	For LNG import equipment, the quantity of LNG imported that is sent to sale in the calendar year, in thousand standard cubic feet; for LNG export equipment, the quantity of LNG exported that is sent to sale in the calendar year, in thousand standard cubic feet.	0.05 percent of natural gas sent to sale from or through facility.
LNG storage	The quantity of LNG withdrawn from storage and sent to sale in the calendar year, in thousand standard cubic feet.	

[a] Throughput metrics in this table are based on the proposed subpart W reporting elements in the 2023 Subpart W Proposal (88 FR 50282).

1. Facility Waste Emissions Thresholds

CAA section 136(f)(1) through (3) establishes facility-specific waste emissions thresholds above which the EPA must impose and collect the WEC. The CAA defines waste emissions threshold requirements, and establishes the method for calculation of the charge,

for nine segments of the oil and gas industry.

CAA section 136(f)(1) requires the EPA to impose and collect the WEC on facilities in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments with methane emissions, in metric tons, that exceed either 0.20 percent of the natural gas sent to sale from the facility or, if no natural gas is sent to sale, 10 metric tons of methane per million barrels of oil sent to sale from the facility. To determine the waste emissions threshold from a WEC applicable facility in the onshore petroleum and natural gas production and the offshore petroleum and natural gas production industry segments, the EPA is proposing two equations based on whether the facility sends natural gas to sale, which reflect the statutory text at 136(f)(1)(A) and (B). For onshore and offshore petroleum and natural gas production WEC applicable facilities that send natural gas to sale, we are proposing to use equation B–1 of 40 CFR 99.20(a). This equation multiplies the annual quantity of natural gas sent to sale from a WEC applicable facility by 0.002 (*i.e.,* 0.20 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet).[18] For onshore and offshore petroleum and natural gas production facilities that have no natural gas sent to sale, we are proposing to use equation B–2 of 40 CFR 99.20(b). Similar to proposed equation B–2, the annual quantity of oil sent to sale from a WEC applicable facility would be multiplied by 10 metric tons of methane per million barrels of oil.[19]

For WEC applicable facilities in the onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, LNG import and export equipment, and LNG storage industry segments, CAA section 136(f)(2) requires the EPA to impose and collect WEC on facilities with reported methane emissions, in metric tons, that exceed 0.05 percent of the natural gas sent to sale from or through such facility. To determine the waste emissions threshold from a WEC applicable facility in these industry segments, we are proposing to use equation B–3 under 40 CFR 99.20(c). This equation would multiply the annual quantity of natural gas sent to sale from or through a WEC applicable facility by 0.0005 (*i.e.,* 0.05 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet) to determine the facility-level waste emissions threshold.[20] The EPA notes that certain facilities in the gathering and boosting and natural gas processing industry segments may have zero throughput values using the proposed approach, because these facilities either receive no natural gas, or process or dispose of natural gas received, in a manner that results in sending zero quantities of natural gas to sale. Treatment of these facilities is discussed in section II.B.6. of this preamble.

CAA section 136(f)(3) requires the EPA to impose and collect WEC on WEC applicable facilities in the onshore natural gas transmission compression, onshore natural gas transmission pipeline, and underground natural gas storage industry segments with methane emissions, in metric tons, that exceed 0.11 percent of the natural gas sent to sale from or through such facility. We are proposing that equation B–4 under 40 CFR 99.20(d) be used to calculate the waste emissions threshold from a WEC applicable facility in these industry segments. Using proposed equation B–4 the EPA would multiply the annual quantity of natural gas sent to sale from or through a WEC applicable facility by 0.0011 (*i.e.,* 0.11 percent) and the density of methane (0.0192 metric tons per thousand standard cubic feet) to determine the facility-level waste emissions threshold.[21]

The annual quantity of natural gas sent to sale from or through a facility reported under subpart W is reported in units of thousand standard cubic feet of natural gas per year, while facility methane emissions are reported in metric tons. The EPA is proposing to interpret the industry segment-specific methane intensity thresholds (*i.e.,* 0.20 percent, 0.05 percent, and 0.11 percent) indicated in CAA section 136(f)(1) through (3) to be in units of thousand standard cubic feet of methane of emissions per thousand standard cubic feet of natural gas. This requires reconciliation of methane emissions reported on mass basis and throughput reported on a volumetric basis. Because the waste emission charge is assessed using dollars per metric ton, the amount by which a facility is below or exceeding the waste emissions threshold must ultimately be converted to metric tons. The EPA's proposed approach in equations B–1, B–3, and B–4 calculates facility waste emissions thresholds in metric tons by calculating the volume of gas at the given industry segment-specific methane intensity and then calculating what the mass of that volume would be if it were methane by multiplying by the density of methane (0.0192 metric tons per thousand standard cubic feet at standard temperature and pressure of 60 °F and 14.7 psia). This allows the waste emissions threshold to be directly compared to reported metric tons of methane. The proposed approach is mathematically equivalent to, but simpler than, an approach that would convert reported methane emissions to volume, subtract a volumetric waste emissions threshold from that reported volume, and then convert the resulting value back to metric tons methane. The EPA notes that the proposed approach does not require information on the constituents or density of natural gas throughput.

As described in this section of the preamble, we are proposing to calculate waste emissions thresholds at the facility level, using the industry segment-specific methane intensity threshold given in CAA sections 136(f)(1) through (3), and the industry segment throughput reported under part 98, subpart W. The vast majority of facilities report as a single subpart W facility to a single subpart W industry segment. However, as discussed in section II.A. of this preamble, there are

[18] Equation B–1 reflects the statutory text at 136(f)(1)(A), which states: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility [in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed (A) 0.20 percent of the natural gas sent to sale from such facility . . .'' 42 U.S.C. 7436(f)(1)(A).

[19] Equation B–2 reflects the statutory text at 136(f)(1)(B), which states: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility [in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed . . . (B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale.'' 42 U.S.C. 7436(f)(1)(B).

[20] Equation B–3 reflects the statutory text at 136(f)(2), which states: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility in [the onshore petroleum and natural gas gathering and boosting, onshore natural gas processing, LNG import and export equipment, and LNG storage industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility.'' 42 U.S.C. 7436(f)(2).

[21] Equation B–4 reflects the statutory text at 136(f)(3), which states: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility in [the onshore natural gas transmission compression, onshore natural gas transmission pipeline, and underground natural gas storage industry segments], the Administrator shall impose and collect the charge on the reported metric tons of methane emissions that exceed 0.11 percent of the natural gas sent to sale from or through such facility.'' 42 U.S.C. 7436(f)(3).

a small number of reporters that report as a single subpart W facility to multiple subpart W industry segments. Specifically, for facilities that report to multiple industry segments under a single subpart W facility, we are proposing in 40 CFR 99.20(e) that the facility-level waste emissions threshold is determined as the sum of the waste emissions thresholds for each industry segment that the facility operates within.

The EPA proposes to interpret ''natural gas sent to sale'' to mean the amount of natural gas sent to sale from a facility in the onshore or offshore petroleum and natural gas industry segments, as reported under subpart W. The EPA proposes to interpret ''natural gas sent to sale from or through'' to mean the natural gas throughput volume for a facility not in the onshore or offshore petroleum and natural gas industry segments that aligns with the movement of gas through a facility (*e.g.,* gas transported rather than gas received), as reported under subpart W. For facilities in the onshore and offshore petroleum and natural gas production industry segments that do not send natural gas to sale, the EPA proposes to interpret ''barrels of oil sent to sale'' to mean the quantity of crude oil sent to sale, as reported under subpart W. The EPA is aware of other approaches for calculating ''methane intensity'' currently in use. These include methodologies that allocate total methane emissions between the petroleum and natural gas value chains and/or use methane rather than natural gas as the throughput value. CAA section 136(f)(1) through (3) refers to reported facility emissions and does not discuss allocation of emissions between petroleum and natural gas. With the exception of production facilities that only produce oil, the statutory text clearly lists natural gas as the throughput value. Further, the proposed approach can be implemented with data currently reported under subpart W, while alternative methane intensity methodologies would require reporting of additional data and increase the burden on the oil and gas industry. For example, an approach that calculates intensity as methane emissions divided by the methane in natural gas throughput would require facilities to collect and report additional information of the methane content of natural gas. An approach that calculates methane intensity as the mass of methane emissions divided by the mass of natural gas would require facilities to collect and report detailed information on all of the constituents of natural gas throughput. Finally, an approach that allocates methane emissions between the petroleum and natural gas value chains based on energy content would require facilities to collect and report detailed data on the constituents and energy content of all hydrocarbon throughput. The EPA therefore believes that the proposed approaches not only follow a plain reading of CAA section 136(f) but are also the best and most reasonable approaches.

The EPA invites comments on our proposed approach for calculating the waste emissions thresholds, particularly our proposed methodology and the underlying assumptions used to calculate the waste emissions threshold in metric tons of methane.

2. Facility Methane Emissions

To determine the total methane emissions from a WEC applicable facility, the EPA proposes to use facility-level methane data as reported under subpart W. On August 1, 2023, the EPA proposed revisions to subpart W consistent with the authority and directives set forth in CAA section 136(h) as well as the EPA's authority under CAA section 114 (88 FR 50282). Facility methane emissions (and any emissions associated with exemptions from the WEC) would be calculated using methods and data required by subpart W for the emissions year covered by the annual WEC filing. For example, for the first year of the WEC (2024 emissions), WEC calculations would be based on the Subpart W requirements effective in 2024, and emissions year 2025 emissions and beyond would be based on Subpart W requirements effective in 2025 or any future revisions. The proposed approaches for calculating waste emissions thresholds and facility methane emissions align with the text of CAA section 136(f). CAA section 136(f)(1) through (3) states that the WEC is to be calculated based ''on the reported metric tons of methane emissions from such facility that exceed'' specified percentages of the ''natural gas sent to sale from such facility'' or ''natural gas sent to sale from or through such facility'' (or for onshore and offshore petroleum facilities that do not send gas to sale, ''ten metric tons of methane per million barrels of oil sent to sale from such facility''). The EPA proposes to interpret ''reported metric tons of methane emissions'' to mean all reported methane emissions from a facility, as reported under subpart W. This value is an input to equation B–6.

3. Facility WEC Calculation

To calculate the amount by which a WEC applicable facility is below or exceeding the waste emissions threshold, the EPA proposes to use equation B–6 of 40 CFR 99.21, in which the facility waste emissions threshold, as determined in 40 CFR 99.20, is subtracted from facility total methane emissions. This calculation results in a value of metric tons of methane, the total facility applicable emissions, that is negative for facilities below the waste emissions threshold and positive for facilities exceeding the waste emissions threshold. The remainder of proposed 40 CFR 99.21 describes how to determine the WEC applicable emissions below or exceeding the waste emissions threshold considering any exemptions that may apply for WEC applicable facilities with total facility applicable emissions greater than 0 mt CH_4 (see section II.D. of this preamble for more information on the exemptions). As discussed in section II.C.2.b. of this preamble, the EPA proposes that WEC applicable facilities receiving the regulatory compliance exemption would be exempted from the WEC, and therefore would have zero WEC applicable emissions. For facilities in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments with total facility applicable emissions greater than 0 mt CH_4, any methane emissions associated with applicable exemptions would be subtracted to calculate WEC applicable emissions. For all other facilities, facility applicable emissions would equal WEC applicable emissions (unless the facility was receiving the regulatory compliance exemption).

The EPA invites comments on the proposed approach for calculating WEC applicable emissions.

4. Netting

The metric tons of methane emissions equal to, below, or exceeding the waste emissions threshold, or WEC applicable emissions, for each WEC applicable facility would be determined as specified in 40 CFR 99.21. CAA section 136(f)(4) allows for the netting of emissions at facilities below the waste emissions thresholds with emissions at facilities exceeding the waste emissions thresholds for facilities under common ownership or control within and across all applicable industry segments identified in 136(d). The EPA proposes to implement netting using equation B–8 at 40 CFR 99.22. Equation B–8 would sum the WEC applicable emissions from all WEC applicable facilities under the

common ownership of control of a WEC obligated party to calculate net WEC emissions for that WEC obligated party. The EPA's proposed interpretation of common ownership and control and definition of WEC obligated party are discussed in section II.C. of this preamble.

5. Waste Emissions Charge Calculation

CAA section 136(e) establishes annual $/metric ton charges for all methane emissions from WEC applicable facilities exceeding the waste emissions thresholds. The EPA proposes that a WEC obligated party's total annual WEC, or WEC obligation, would be calculated by multiplying its net WEC emissions, as determined by proposed Equation B–8, by the annual $/metric ton charge. WEC obligated parties with net WEC emissions less than or equal to zero would not have a WEC obligation. WEC obligated parties with net WEC emissions greater than zero would have a WEC obligation and be required to pay a waste emissions charge. WEC obligation calculations would be made for calendar years 2024, 2025, 2026, and each year thereafter as per proposed 40 CFR 99.23.

6. Gathering and Boosting and Processing Facilities With Zero Reported Throughput

The EPA is aware of a small number of gathering and boosting and natural gas processing facilities that emit methane and report under subpart W, but do not send gas to sale. As a result, these facilities would report zero natural gas volumes for the throughput metrics used in the proposed waste emissions threshold calculations. For the gathering and boosting industry segment, these may be facilities that receive natural gas but then reinject it underground or otherwise do not transport any natural gas. For the processing industry segment, these may be fractionation plants that only receive and process natural gas liquids (NGLs) and do not handle natural gas. Under the proposed approach, all reported methane emissions from facilities with no reported throughput would be considered to be exceeding the waste emissions threshold. The EPA notes that the proposed approach is based on a plain reading of the statutory text; because these facilities would have a calculated waste emissions threshold of zero, all reported methane would by default be exceeding the threshold. The EPA requests comment on the treatment of gathering and boosting and natural gas processing facilities that do not report any volumes for the proposed WEC throughput metrics. The EPA requests comment on the proposed approach that would consider all reported methane from these facilities to be above the waste emissions threshold. The EPA also requests comment on an alternative approach that would consider all reported methane emissions from these facilities to be below the waste emissions threshold.

C. Common Ownership or Control for Netting of Emissions

1. EPA Interpretation and Proposal To Implement ''Common Ownership or Control'' for the Purposes of Part 99

CAA section 136(f)(4) allows WEC applicable facilities under ''common ownership or control'' to net ''emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments'' listed in section 136(d) and as defined in subpart W. The EPA interprets this to mean that for all eligible WEC applicable facilities under common ownership or control, the amount of metric tons of methane below the waste emissions thresholds (*i.e.,* the difference between emissions equal to the waste emissions threshold and reported emissions) at facilities below the waste emissions threshold may be used to net against the amount of metric tons of methane emissions that exceed the waste emissions thresholds at facilities above the waste emissions threshold. For the purposes of establishing common ownership or control under CAA section 136(f)(4), the EPA proposes to define ''WEC obligated party'' in 40 CFR 99.2. The EPA proposes that each subpart W facility would be associated with a single WEC obligated party (though each WEC obligated party may be associated with multiple subpart W facilities), which would be reported under the proposed requirements at 40 CFR 99.7. As discussed in section II.B.4. of this preamble and proposed in 40 CFR 99.22, all WEC applicable facilities associated with a common WEC obligated party would be able to net emissions for the purposes of calculating the WEC obligated party's net emissions and total WEC obligation.

The EPA proposes that the WEC obligated party be the subpart W facility ''owner or operator'' as reported under 40 CFR 98.4(i)(3). The EPA proposes definitions for facility ''owner'' and ''operator'' that are applicable to the offshore petroleum and natural gas production, onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, LNG import and export equipment, and LNG storage industry segments at 40 CFR 99.2. The onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, and onshore natural gas transmission pipeline industry segments each have separate definitions for facility ''owner or operator'' proposed at 40 CFR 99.2. These proposed definitions are identical to the corresponding definitions in 40 CFR part 98; the EPA proposes that the owner or operator associated with a subpart W facility as reported under 40 CFR 98.4(i)(3) (regarding the list of owners or operators of the facility for the certification of representation of the designated representative) would also be the WEC obligated party for that facility. The EPA believes that the proposed approach for using facility owner or operator for the purpose of defining common ownership or control aligns with a plain reading of the statutory text. CAA section 136(c) states that a charge on methane emissions that exceed the waste emissions threshold shall be imposed and collected ''from an owner or operator of an applicable facility.'' Further, in the context of required revisions to the subpart W methodologies used to calculate methane emissions, CAA section 136(h) states that those revisions must be made to ''allow owners and operators of applicable facilities to submit empirical emissions data, in a manner to be prescribed by the Administrator, to demonstrate the extent to which a charge under subsection (c) is owed.'' Thus, CAA section 136(c) requires the charge to be imposed and collected on a facility owner or operator, and CAA section 136(h) presumes that owners and operators are responsible for submitting empirical data. Furthermore, since the list of owners or operators for each facility is directly reported under 40 CFR 98.4(i)(3), an established program at the time that Congress drafted CAA section 136, the EPA proposes that under the best reading of the statutory text, the facility owner or operator would be used as the entity for establishing common ownership or control of subpart W facilities within and across all applicable subpart W industry segments.

Although the EPA believes that the owner or operator approach is the most appropriate for netting under WEC, we seek comment on an alternative approach that would use the parent company of a facility's owner or operator for the WEC obligated party and determining common ownership or control of facilities. For each subpart W facility, the facility owner or operator

and parent company are reported under 40 CFR 98.4(i)(3) and 40 CFR 98.3(c)(11), respectively. The parent company represents the highest-level company based in the United States with an ownership interest in the facility. For parent company reporting, the percent ownership in the facility is also reported under 40 CFR 98.3(c)(11). Because a parent company has an ownership interest in a subpart W facility, multiple facilities may be said to be owned by the same parent company and might also be considered as being under common ownership or control of that parent company. So, one difference between using the owner or operator rather than a parent company for establishing common ownership or control is the number of facilities that may be brought under common ownership or control in each approach. For most facilities, the reported owner or operator is a subsidiary of the reported parent company. A single parent company may have multiple different owners or operators (*i.e.,* subsidiaries) associated with facilities within and across subpart W industry segments. For example, an onshore petroleum and natural gas production facility and onshore natural gas processing facility owned by the same parent company may each have a different owner or operator. The number of ''common'' facilities is usually higher when the parent company is used, and lower when the owner or operator is used. The parent company approach would therefore provide a broader interpretation of common ownership or control relative to use of owner or operator. However, it is important to note that at the time CAA section 136 was enacted in 2022, the term ''common ownership or common control'' was a term used in the subpart W regulations. Under the subpart W regulations, the EPA has used the term ''common ownership or control'' to refer to the owner or operator, not to the parent company. Congress was likely aware of this definition when it enacted section 136. Therefore, the EPA is proposing to use facility owner or operator for the purpose of establishing common ownership or control based on a plain reading of CAA section 136(c), and believes that this is the better reading of the text in context with subpart W. However, the EPA requests comment on both the proposed approach using facility owner or operator and on an alternative approach using facility parent company for determining common ownership or control of WEC applicable facilities.

In some cases, a WEC applicable facility may have multiple owners or operators reported under 40 CFR 98.4(i)(3). In these situations, the EPA proposes that the facility owners or operators would designate one of the owners or operators as the WEC obligated party for that facility, as proposed in 40 CFR 99.4. Under the proposed approach, the process for selection of the WEC obligated party at facilities with multiple owners or operators would be similar to the approach for selecting a designated representative under 40 CFR part 98. This process would require selection of a single WEC obligated party for the facility by an agreement binding on each of the owners or operators associated with the facility. The proposed approach for facilities with multiple owners allocates all facility-level methane emissions below or exceeding the waste emissions thresholds to a single WEC obligated party. We request comment on the proposed approach of allocating all methane emissions below or exceeding the waste emissions thresholds from a facility with multiple owners or operators to a single WEC obligated party. We request comment on other approaches that could be used to allocate emissions to owners or operators at facilities with multiple owners or operators. We request comment on the proposed approach of requiring the group of facility owners or operators to determine which owner or operator is the WEC obligated party, and alternative approaches for designating the WEC obligated party, at facilities with multiple owners or operators.

The EPA also evaluated an approach that would allocate facility methane emissions below or exceeding the waste emissions thresholds at facilities with multiple owners to parent companies based on their reported percent ownership in the facility. Some subpart W facilities with multiple owners have parent companies with very small (*i.e.,* less than one percent) equity shares. The minority owners may include individuals and small oil and gas companies with no operational control over the facility. Allocating methane emissions below or exceeding the waste emissions thresholds based on facility ownership would expose a larger number of individuals and small companies to potential WEC obligations. We note that allocating methane emissions from facilities with multiple owners to each owner based on facility ownership would only be possible using a parent company approach and not using the proposed owner or operator approach because GHGRP reporting does not currently include data on owner or operator facility equity share or include direct linkages between owners or operators and parent companies that could be used to assign facility ownership percentages to owners or operators. There may also be situations in which the facility owner or operator is a third-party operator with no ownership in the facility either directly or through their parent company.

We request comment on an alternate approach that would allocate methane emissions to parent companies using percent ownership in the facility as well as other possible allocation methodologies for facilities with multiple parent companies. We request comment relevant to understanding other appropriate approaches for allocating emissions from a facility with multiple parent companies or owners or operators to a single WEC obligated party or multiple WEC obligated parties. For example, how are costs allocated at such facilities, and are they usually shared by parent companies (*e.g.,* based on percent ownership in the facility), entirely borne by the facility operator, or does cost sharing vary based on facility-specific contractual agreements?

2. Facilities Eligible for the Netting of Emissions

The EPA's proposed implementation of CAA section 136(f)(4) would define which types of applicable subpart W facilities are eligible to net emissions. We propose to establish netting eligibility criteria based on a facility's total reported subpart W GHG emissions, status in relation to the regulatory compliance exemption, and overall regulated status under the GHGRP. In our proposed approach to netting, we chose interpretations which were the most consistent with a plain reading of the CAA, as well as the most transparent and straightforward to implement. As described in more detail in the following sections, our approach assumes that if a facility's emissions are not subject to the WEC, either because the facility is not a WEC applicable facility, or because a WEC applicable facility receives the regulatory compliance exemption, that facility's emissions do not factor into the netting of emissions for a WEC obligated party. In other words, only WEC applicable facilities may net, and only WEC applicable emissions may be netted. As will be explained further in section II.C.2.a. of this preamble, we believe this interpretation is consistent with CAA section 136(f)(4) ''the Administrator shall allow for the netting of emissions by reducing the total obligation to

account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d),'' since the reference to ''applicable thresholds'' and ''applicable segments,'' which reflect other subsections under CAA section 136, implies that only WEC applicable emissions should be considered in the netting calculation. We note that for applicable facilities with unreasonable delay or plugged well exemptions, under the proposal, emissions associated with these exemptions would be removed from any emissions exceeding the waste emissions threshold prior to netting calculations.

a. Facilities Required To Report To GHGRP and That Have Subpart W Emissions Greater Than 25,000 Metric Tons of CO_2e

In accordance with CAA section 136(c) and the proposed definition of ''WEC applicable facility'' in 40 CFR 99.2, we are proposing that subpart W facilities that have subpart W emissions greater than 25,000 mt CO_2e are eligible for netting, with the exception of those that are receiving the regulatory compliance exemption (as discussed in section II.D.2. of this preamble). Facilities that report less than 25,000 mt CO_2e under subpart W are not subject to the WEC, and the EPA proposes that such facilities would not be eligible for netting. These types of facilities are discussed in greater detail in section II.C.2.c. of this preamble. The EPA's proposed approach follows what the agency considers to be the best reading of the plain text of, and the relationship between CAA sections 136(d), 136(c), and 136(f) (which includes subsections 136(f)(4) and 136(f)(1)-(3)). The following sections will provide an overview of the relevant statutory text, and the corresponding basis for the EPA's belief that only WEC applicable facilities may net, and only WEC obligated emissions may be netted, under CAA section 136(f)(4).

CAA section 136(d) introduces the nine industry segments within which all subpart W facilities must fall in order to be evaluated for WEC applicability. Importantly, facilities within these segments are ''applicable facilities'', per CAA section 136(d), but they are not necessarily ''WEC applicable facilities'', subject to possible WEC obligation, unless they report over 25,000 mt CO_2e per year under subpart W. CAA section 136(c) clarifies this point. Specifically, CAA section 136(c) requires the Administrator to impose and collect a charge on the owner or operator ''of an applicable facility that reports more than 25,000 metric tons of carbon dioxide equivalent of greenhouse gases emitted per year pursuant to subpart W''. Thus, building upon the CAA section 136(d) definition, CAA section 136(c) establishes that only facilities which both fall within one or more of the nine CAA section 136(d) industry segments *and* report more than 25,000 mt CO_2e under subpart W are subject to the WEC program. For clarity, in this rulemaking the EPA refers to these facilities as ''WEC applicable facilities''.

CAA section 136(f), which is entitled ''Waste Emissions Threshold'', includes a series of subsections under this heading. Subsections 136(f)(1)–(3) illustrate the meaning of ''waste emissions threshold'' in this context, and explain that these are actually a series of thresholds which determine when and how to impose a charge on methane emissions from WEC applicable facilities, depending on which industry segment or segments they fall under. Specifically, the nine CAA section 136(d) industry segments are categorized into four groups, and a waste emissions threshold is applied to each of the four. CAA section 136(f)(1) covers offshore and onshore petroleum and natural gas production (industry segments (1) and (2) under CAA section 136(d)), and further divides this category depending on whether or not natural gas is sent to sale: ''With respect to imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed in paragraph (1) or (2) of subsection (d), the Administrator shall impose and collect the charge on the reported metric tons of methane emissions from such facility that exceed (A) 0.20 percent of the natural gas sent to sale from such facility; or (B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale.'' [22]

CAA sections 136(f)(2) and (3) follow the same model: section 136(f)(2) establishes thresholds for nonproduction petroleum and natural gas systems (industry segments (3), (6), (7), and (8) under section 136(d)),[23] and imposes a charge on ''the reported metric tons of methane emissions that exceed 0.05 percent of the natural gas sent to sale from or through such facility;'' [24] and section 136(f)(3) establishes thresholds for natural gas transmission (industry segments (4), (5), and (9)) [25] and imposes a charge on ''the reported metric tons of methane emissions that exceed 0.11 percent of the natural gas sent to sale from or through such facility.'' [26] But each industry-specific threshold is introduced in the same way: ''With respect to *imposing and collecting the charge under subsection (c) for an applicable facility in an industry segment listed* in paragraph (x) of subsection (d), [charges shall be imposed as follows]''. Following this plain text, it is clear that the CAA section 136(f) waste emission thresholds apply *only to WEC applicable facilities*–that is, facilities within one or more of the nine WEC industry segments listed in CAA section 136(d) which emit more than 25,000 mt per year CO_2e under subpart W, and thus may be subject to charge under CAA section 136(c).

Finally, in the netting provision itself, CAA section 136(f)(4), states that ''in calculating the total emissions charge obligation for facilities under common ownership or control, the Administrator shall allow for the netting of emissions by reducing the total obligation to account for facility emissions levels that are below the applicable thresholds within and across all applicable segments identified in subsection (d)''. As noted above, the EPA is proposing that this netting provision applies to WEC applicable facilities and WEC applicable emissions only, for three compelling reasons.

First, the EPA believes that per the best reading of the statute, the term ''applicable thresholds'' refers to the waste emission thresholds outlined in CAA section 136(f)(1)–(3). This is important because, as noted above, the waste emissions thresholds apply *only* to WEC applicable facilities—they determine whether, and how, a charge shall be imposed on methane emissions from a facility which has already been triggered into the WEC program by virtue of its 25,000 mt per year CO_2e in subpart W. The thresholds do not apply to facilities which emit fewer than 25,000 mt per year of CO_2e under subpart W, because under CAA section 136(c), no charge may be imposed or collected on such facilities. Facilities which emit less than 25,000 mt per year of CO_2e under subpart W may emit any amount of methane, but these methane emissions are not WEC applicable emissions: they cannot be evaluated according to the waste emissions

[22] 42 U.S.C. at 7436(f)(1).

[23] Specifically: (3) onshore natural gas processing; (6) liquefied natural gas storage; (7) liquefied natural gas import and export equipment; and (8) onshore petroleum and natural gas gathering and boosting.

[24] *Id.* at section 7436(f)(2).

[25] Specifically, (4) onshore natural gas transmission compression; (5) underground natural gas storage; and (9) onshore natural gas transmission.

[26] *Id.* at section 7436(f)(3).

thresholds, and they cannot be considered to fall either above or below these thresholds. Thus, in ''*account[ing] for facility emissions levels that are below the applicable thresholds*'', the EPA understands that it must account for WEC applicable emissions from WEC applicable facilities which fall below the waste emissions thresholds, and produce a negative value under Equation B–6 (see above at section II.B.3.).

As previously stated, EPA's conclusion that the term ''applicable thresholds'' in CAA section 136(f)(4) refers to the waste emissions thresholds outlined in CAA section 136(f)(1)–(3) is supported by both the text and structure of the statute. First, the structure of the statute strongly supports the presumption that CAA section 136(f)(4) refers to netting based on a facility's relationship to the waste emissions thresholds because CAA section 136(f)(4) appears as part of CAA section 136(f), under the ''waste emissions threshold'' heading, and immediately following CAA section 136(f)(1)–(3)'s establishment of the specific waste emissions thresholds for each industry segment. It follows that CAA section 136(f)(4)'s reference to ''applicable thresholds'' refers to these industry segment-specific requirements, and accordingly ''applicable segments'' refers to the industry segments identified in CAA section 136(f)(1)–(3).

A close reading of the text also strongly supports our presumption regarding the waste emissions thresholds, because CAA section 136(f)(4) refers to facility emissions levels that are ''below the *applicable thresholds,*'' plural. The use of the plural, and the use of the term ''applicable,'' both indicate that Congress was referring here to the multiple waste emissions thresholds introduced in CAA sections 136(f)(1) through (3), which specifically and separately apply to WEC applicable facilities within various subsets of industry segments, defined in CAA section 136(d). Again, these separate thresholds *only* apply to WEC applicable facilities, which emit over 25,000 tons per year of CO_2e per year.

In addition to the ''applicable thresholds'' question, the EPA believes that Congress's use of the term ''applicable segments'' in stating that EPA may ''redu[ce] the total obligation to account for facility emissions levels that are below the applicable thresholds *within and across all applicable segments identified in subsection (d),*'' is significant here. While CAA section 136(d) introduces the nine relevant ''industry segments'' within which all WEC applicable facilities must fall, CAA section 136(f)(4) classes these segments into four groups, and is the only provision to use the term ''applicable segments''. As noted above, CAA section 136(f) establishes a set of requirements determining when and how to impose a charge on those facilities triggered into the program, depending on their industry segment and the amount of methane they emit. It follows that CAA section 136(f)(4)'s reference to ''applicable thresholds'' refers to these four group-specific thresholds, and ''applicable segments'' refers to the nine segments within the four segment groups. In other words, each group of segments constitutes the ''applicable'' segments to their corresponding applicable threshold. This is important, again because the four groups laid out under CAA section 136(f) include only WEC applicable facilities.

Finally, Congress's statement that netting shall be employed ''in calculating the total emissions charge obligation for facilities under common ownership or control'', further indicates that only WEC applicable facilities may be netted. Logic indicates that only WEC applicable facilities, with WEC applicable emissions, would be relevant to a determination of total emissions charge obligation. As regards the WEC program, WEC obligated parties are concerned with methane emissions for the WEC applicable facilities for which they are responsible—not various other subpart W facilities for which a WEC charge can never be imposed. Accordingly, the EPA believes that under the best reading of this provision WEC obligated parties may net WEC applicable methane emissions between facilities in different segments, as long as all facilities are WEC applicable facilities.

b. Facilities With Subpart W Emissions Greater Than 25,000 Metric Tons of CO_2e That Are Receiving the Regulatory Compliance Exemption

The EPA proposes that during such time that a facility receives the regulatory compliance exemption, that facility would have zero WEC applicable emissions and thus would not be able to participate in the netting of methane emissions across facilities under common ownership or control of a WEC obligated party. The EPA's proposed approach is based on a plain reading of the statutory text, and follows the same reasoning outlined in section II.C.2.a. of this preamble, which explains that under the best reading of the text, only WEC applicable facilities may net.. This section will further expand upon EPA reasoning that only WEC applicable emissions may be netted, and clarify this point for purposes of the regulatory compliance exemption.

CAA section 136(f)(6)(A) states that ''[c]harges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111'' if specific criteria are met (these criteria are discussed in section II.D.2. of this preamble). The EPA's interpretation of the regulatory compliance exemption is that, for a WEC applicable facility meeting the exemption criteria, the entire facility is exempted, and therefore the facility does not generate WEC-applicable emissions. In order to net, facilities must be WEC applicable facilities (they must emit over 25,000 CO_2e per year under subpart W) and they must also generate WEC applicable emissions (methane emissions below or above the WEC emissions thresholds *that are subject to charge.*) Again, this follows from the text. Section 136(f)(4) applies ''in calculating the total emissions charge obligation'' only. Emissions which are subject to an exemption are by definition not subject to charge. WEC applicable emissions are only those emissions subject to charge under section 136(c). Because, under the proposed approach WEC applicable facilities with the regulatory compliance exemption would have zero WEC applicable emissions, these facilities would by default not be able to participate in netting (*i.e.,* they would have no emissions to net). The proposed approach of facilities with the regulatory compliance exemption having zero WEC applicable emissions allows for the practical implementation of the exemption within the broader framework of the proposed WEC calculations. Assigning exempted facilities zero WEC applicable emissions ensures that charges shall not be imposed on these facilities without interfering with netting calculations or removing facility-specific reporting elements necessary for WEC implementation. Such facilities would continue to be included in WEC filings reported under part 99 as long as they remain WEC applicable facilities. Further, if such facilities fall out of compliance such that the regulatory compliance exemption no longer applies and they again generate WEC applicable emissions, such facilities would again be included in netting.

The EPA notes that under the proposed approach, facilities with emissions below the waste emissions

threshold would not receive the regulatory compliance exemption (see discussion in section II.D.2.f. of this preamble), and thus these facilities would always have WEC applicable emissions and would be able to participate in netting across facilities under common ownership or control.

The EPA requests comment on the proposed approach in which WEC applicable facilities receiving the regulatory compliance exemption would have zero WEC applicable emissions. The EPA requests comment on other options for WEC applicable facilities receiving the regulatory compliance exemption and their treatment in the context of netting.

c. Exclusion of Facilities Reporting 25,000 or Fewer Metric Tons of CO_2e to Subpart W of Part 98

Per CAA section 136(c), the WEC shall only be imposed on owners or operators of applicable facilities that report more than 25,000 mt CO_2e under subpart W. A large number of facilities that report under the GHGRP have subpart W emissions below 25,000 mt CO_2e. A part 98 subpart W facility is generally allowed to cease reporting or ''offramp'' due to meeting either the 15,000 mt CO_2e level or the 25,000 mt CO_2e level for the number of years specified in 40 CFR 98.2(i) based on the CO_2e reported, as calculated in accordance with 40 CFR 98.3(c)(4)(i) (*i.e.,* the annual emissions report value as specified in that provision). Some facilities have dropped below 25,000 mt CO_2e in total reported emissions to part 98 and are continuing to report while on the reporting offramp. Other facilities report emissions under multiple subparts (*e.g.,* subpart W and subpart C) and have total emissions equal to or greater than 25,000 mt CO_2e across both subparts, but subpart W emissions below 25,000 mt CO_2e. The latter category includes processing plants, transmission compressor stations, underground storage facilities, LNG storage facilities, and LNG import and export facilities that report their combustion emissions under subpart C. Many of these facilities have total GHGRP emissions exceeding 25,000 mt CO_2e, but subpart W emissions that alone fall below this threshold.

We are proposing that subpart W facilities with subpart W emissions equal to or below 25,000 mt CO_2e are not WEC applicable facilities and are therefore excluded from netting. This proposed approach aligns with a plain reading of the requirement in CAA section 136(c) that only applicable facilities with subpart W emissions exceeding 25,000 mt CO_2e are subject to the WEC—facilities below this threshold are not subject to the WEC and therefore do not generate WEC applicable emissions and are not able to net emissions.

d. Exclusion of Facilities Not Required To Report to the GHGRP

Per CAA section 136(c) and (d), CAA section 136(f)(4), and the proposed definition of ''WEC Applicable Facility'' in 40 CFR 99.2, which reflects the statutory text at CAA section 136(d), we are proposing that facilities that are not required to report to the GHGRP, and thus are not WEC applicable facilities, would not be eligible for netting. Again following the reasoning outlined in section II.C.2.a. of this preamble, the EPA's proposed approach is based on a plain reading of CAA section 136(f)(4), which states that netting is allowed within and across the nine subpart W industry segments identified in CAA section 136(d); section 136(d), which states that ''applicable facility(ies)'' are facilities within industry segments ''as defined in subpart W''; and section 136(c), which states that the WEC is only applicable to subpart W facilities that report more than 25,000 CO_2e per year. Following the plain text, only facilities subject to subpart W may be evaluated as possible WEC applicable facilities, and only WEC applicable facilities (subpart W facilities emitting over 25,000 CO_2e) can have WEC applicable emissions that may be subject to charge. As explained in section II.C.2.a. of this preamble, only WEC applicable facilities may net, and only WEC applicable emissions may be netted. Further, CAA section 136(c) states that the WEC is only applicable to certain facilities that report under subpart W of the GHGRP.

D. Exemptions to the Waste Emissions Charge

1. Exemption for Emissions From Eligible Delays in Environmental Permitting Under CAA Section 136(f)(5)

CAA section 136(f)(5) establishes an exemption for emissions resulting from delay in environmental permitting by stating, ''Charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay, as determined by the Administrator, in environmental permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation.''

This provision would exempt from the charge certain emissions occurring at facilities in the onshore and offshore production segments. Paragraph (1) referenced in the exemption refers to CAA section 136(f)(1), which establishes the waste emissions threshold for applicable facilities in the production sector, as discussed in section II.B. of this preamble. The exemption is limited to emissions occurring as a result of certain delays in permitting of gathering or transmission infrastructure necessary for offtake of increased volume as a result of methane emissions mitigation implementation. Infrastructure necessary for offtake would include gathering and transmission pipelines and compressor stations. Increased volume as a result of methane emissions mitigation implementation would include increased natural gas amounts available for transport that would have otherwise been emitted.

a. Emissions Eligible for the Permitting Delay Exemption

Given the complexity of defining and determining ''unreasonable delay'' related to environmental permitting, the EPA is proposing a simplified approach of establishing a set of four criteria for applying the unreasonable delay exemption established by CAA section 136(f)(5). These criteria would only apply in the context of determining eligible emission exemptions for the implementation of CAA 136(f)(5) and this proposed rulemaking; they are not intended to speak to the reasonableness of a permitting delay in any other context. The EPA understands that the issue of what constitutes an unreasonable delay is multi-faceted and may be quite different under different factual circumstances. At the same time, the EPA believes it is important in the context of this program to propose a definition that is both consistent with the statutory charge and administrable within the capabilities of the EPA. With those caveats in mind, the EPA proposes the following four criteria for implementing this exemption: (1) the facility must have emissions that exceed the waste emissions threshold; (2) neither the entity seeking the exemption, nor the entity responsible for seeking the permit, may have contributed to the delay; (3) the exempted emissions must be those (and only those) resulting from the flaring of gas that would have been mitigated without the permit delay, and the flaring that occurs must be in compliance with all applicable local, state, and Federal regulations regarding flaring emissions; and (4) a set period of months must have passed from the time a submitted permit application was

determined to be complete by the applicable permitting authority.

The EPA believes this approach meets the Congressional intent of this exemption while creating a program that can be implemented annually allowing for collection of WEC in a timely manner. The proposed approach is intended to reduce burden on the companies and government compared with an approach that would not specify a timeframe or other criteria but would rely on decisions made on a case-by-case basis to determine whether the timing and other circumstances of an individual permitting action constitutes an unreasonable delay. We note, however, that these criteria outlined above, including the timeframe, are proposed for the purpose of defining the emissions eligible for an exemption for the purposes of the implementation of CAA 136(f)(5) and this proposed rulemaking only and are not applicable for defining an unreasonable delay outside of this context. The criteria introduced in this section do not apply to the determination of unreasonable delay for purposes of the National Environmental Policy Act (NEPA), the Administrative Procedure Act (APA), or any other law involved in permitting processes or any other agency actions. In particular, the timeline criterion should not be considered applicable or informative to the determination of unreasonable delay in any context other than determining emission exemptions for the implementation of CAA 136(f)(5) and this proposed rulemaking.

The first criterion, that the facility must have emissions that exceed the waste emissions threshold, is based on CAA 136(f)(5), which states that ''charges shall not be imposed pursuant to paragraph (1) on emissions that exceed the waste emissions threshold specified in such paragraph if such emissions are caused by unreasonable delay.'' A straightforward reading of this language limits the exemption to emissions exceeding the waste emissions threshold. In addition, since charges would not be imposed on emissions below the threshold, an exemption is unnecessary in cases where facility emissions are below the threshold. The EPA proposes that emissions from facilities that are below the waste emissions threshold would not be exempted. The EPA proposes that for facilities that exceed the waste emissions threshold, emissions eligible for the permitting delay exemption would be subtracted from the facility emissions that exceed the waste emissions threshold. The exempted emissions would not be used to reduce emissions totals below the threshold (*i.e.,* the lowest possible WEC applicable emissions for a facility with the exemption would be zero).

The second criterion relates to responsiveness on the part of the production sector WEC applicable facility reporting emissions caused by a delay in gathering or transmission infrastructure and the gathering or transmission infrastructure permit applicant: neither the entity potentially eligible for the exemption (*i.e.,* a WEC applicable facility in the onshore or offshore production sector) nor the entity seeking the environmental permit (*e.g.,* an entity seeking a permit for gathering or transmission infrastructure) has contributed to the delay in permitting.

The EPA is proposing that contributions to the delay by either the production entity potentially eligible for the exemption or the entity seeking the environmental permit would be determined based upon the timeliness of response to requests for additional information or modification of the permit application. Delays in response exceeding the response time requested by the permitting agency, or requested by the relevant production or gathering or transmission infrastructure entity seeking the permit, or responses that exceed 30 days from the request if no specific response time is requested, would be considered to contribute to the delay in processing the permit application. Note that this proposed determination of what would constitute a delay eligible for the exemption in environmental permitting would be specific solely to implementation of CAA section 136(f)(5) and this proposed rulemaking for part 99, and would not necessarily be applicable to any other section of the CAA, or any permitting program administered by the EPA or by a state or local permitting authority.

The third criterion is that the exempted emissions must be those resulting from the flaring of gas that would have been mitigated without the permit delay—and that exempted emissions must be in compliance with all applicable local, state, and Federal regulations regarding flaring emissions. The EPA believes that this approach reasonably follows from the text of section 136(f)(5), which exempts emissions caused by unreasonable delay in the permitting of ''gathering or transmission infrastructure *necessary for offtake of increased volume as a result of methane emissions mitigation implementation.*'' [27] Following this statutory directive, the EPA is proposing that exempted emissions are flaring emissions which (1) would otherwise be captured in accordance with applicable regulations but (2) are not captured due to a delay in the permitting necessary for offtake. It is anticipated that operations seeking the exemption could include oil production sites planning to send gas to sale, rather than flaring the emissions, or facilities that produce natural gas, condensate or natural gas liquids and that expand operations and are flaring gas because a pipeline is not yet available. Only flaring emissions caused by the unreasonable delay in permitting, and occurring in compliance with all applicable regulations, would be exempt. Other emissions occurring at the wellsite would not be exempt because they are not associated with the delay or because they do not occur in compliance with applicable regulations. For example, fugitive emissions from leaks would occur with or without the delayed infrastructure, and venting emissions is widely restricted due to Federal, state, or local regulations on venting.

Flaring emissions that occur as a result of flaring that is not in compliance with applicable regulations are ineligible for the exemption. This approach accords with the text of section 136(f)(5), which states that the exemption is for emissions occurring as a result of unreasonable delay in permitting required for the build out of infrastructure ''necessary for offtake of increased volume *as a result of* methane emissions mitigation.'' [28] Regulations limiting flaring and venting will result in an increased volume of gas that must be captured and transmitted, compared with a circumstance without methane emissions mitigation implementation, in which gas is flared or vented on site. Thus, the EPA understands that this provision is designed to exempt flaring done in compliance with regulations, where sources are prepared to capture gas but cannot yet do so due to lack of offtake infrastructure. However, a delay in permitting does not allow exemption from other applicable local, state, and Federal regulations regarding flaring. Thus, the flaring emissions exempt under 136(f)(5) cannot exceed flaring emissions allowable under other applicable local, state, and Federal regulations.

The fourth criterion is that an eligible ''unreasonable delay'' would be a delay that exceeds a set period of months specified in the final rule. The EPA's current assessment is that this time period would likely fall somewhere between 30 and 42 months from the date that a submitted permit application

[27] 42 U.S.C. 7436(f)(5) (emphasis added).

[28] 42 U.S.C. 7436(f)(5)

was determined to be complete by the relevant permitting authority. This time period is not tied to the timing of the WEC; a facility that meets all four criteria would be eligible for the exemption in the first year of the WEC if the time period requirement has been met. The relevant permitting authority could be the United States Federal Energy Regulatory Commission (FERC), or other federal, state or local agencies that issue environmental permits. The environmental permitting process can require multiple steps including, but not limited to: the entity preparing and submitting a permit application; the entity responding to comments with supporting information; the regulatory agency preparing a draft permit; public comment; and preparation and issuance of the final permit. Target dates for permit actions can vary by regulatory agency and depend, for example, on whether the relevant permit is for a new or existing source, or whether the action is a major or minor modification. The EPA is proposing to set a timeframe for unreasonable delay that is not specific to particular permitting actions or agency timelines.

The EPA is proposing to set a timeline somewhere in the range of 30 to 42 months, with the default to be specified in the final rule after consideration of comments received. This preliminary range is based on the EPA's current understanding of timelines for oil and gas permitting across Federal agencies. In particular, the preliminary range is informed by the EPA's review of data made available through the Federal Permitting Improvement Steering Council (FPISC) through Title 41 of the Fixing America's Surface Transportation Act (FAST–41). The ''Recommended Performance Schedules for 2020'' released by FPISC contains data for the Federal review and permitting of 18 pipeline projects under the FAST–41 program.[29] For these projects, the mean time from receipt by FERC of a complete application to the issuance of a certificate of public convenience and necessity for interstate natural gas pipelines was 23 months, with three of the 18 projects (17 percent) exceeding 30 months. Criteria for inclusion in the FAST–41 program include projects that are considered likely to require investment exceeding $200,000,000 and that do not qualify for abbreviated review under applicable law; or projects of a size and complexity that the FPISC determines are likely to benefit from inclusion.[30] On this basis, the EPA believes the FAST–41 dataset may be a conservative population (*i.e.,* require more complex environmental review and permitting) when compared to the total of all gathering or transmission infrastructure projects.

The proposed range of 30 to 42 months also takes into account the 2023 Fiscal Responsibility Act, which set a limit under the National Environmental Policy Act of 1 year for completion of an Environmental Assessment and 2 years for completion of an Environmental Impact Statement unless extended by the lead agency in consultation with the applicant or project sponsor. However, the amount of time necessary to complete an Environmental Assessment or Environmental Impact Statement will vary depending on the specific agency action at issue, and this proposed timeline is not intended to reflect a determination of the reasonable length of a time necessary to complete such analysis in any specific instance. For projects requiring approval or permitting from a federal agency, completion of an Environmental Assessment or Environmental Impact Statement must occur prior to the agency taking a final agency action. Additional steps in the process that must be completed following completion of review under NEPA may add several months to the overall timeframe (*e.g.,* convening of FERC to approve or deny a certificate of public convenience and necessity).

We note that all four criteria must have been met for the EPA to determine that for the purpose of this exemption, emissions were caused by an unreasonable delay. No single factor, including timing, would be determinative as to whether a delay unreasonable in the context of this exemption. We are not assessing whether a delay of any particular period of months alone (*i.e.,* in the absence of the other three criteria) should be considered unreasonable in the context of this exemption, and we are not assessing the reasonableness of a particular timeframe or collection of conditions outside of the context of this exemption specific to CAA section 136. An assessment of reasonableness in any other context depends on the circumstances specific to that context, which can vary considerably and there is no straightforward way to determine whether a delay is reasonable or unreasonable that applies to all contexts. We note that using the approach of requiring four criteria to be met may not fully capture case-by-case circumstances and therefore may not always produce the same determination as a more holistic evaluation would. We have proposed this approach of using four criteria, including one specifying a set timeframe, for the purposes of this exemption only to simplify this process, and for clarity and administrability; we understand that longer permitting timeframes are often not unreasonable in other contexts.

As an alternative to specifying that an ''unreasonable delay'' requires a set period of months to have elapsed since a permit application is deemed complete (in addition to the other three criteria), the EPA considered adopting a case-by-case process for determining whether an unreasonable delay in permitting has occurred. Under such an approach, the exemption for unreasonable delay could only be utilized by a facility that has obtained a facility-specific finding of unreasonable delay from the EPA. The EPA would evaluate documentation provided by a WEC obligated party to determine if there was an unreasonable delay. A WEC obligated party would not exclude emissions it claimed are associated with the unreasonable delay exemption until such time as it obtained an unreasonable delay finding from the EPA. In other words, emissions associated with a claim of unreasonable delay for which there is not an unreasonable delay determination by the EPA could not be subtracted from the emissions totals in the initial WEC filing. If the EPA subsequently were to make such a finding, the EPA would authorize a refund in accordance with its determination. Documentation could include information such as that currently proposed to be reported, such as information on mitigation activities, permitting timing, and regulations relevant to flaring, and information currently proposed as recordkeeping requirements, such as detailed records on responsiveness, in addition to other documentation specific to the relevant gathering or transmission infrastructure environmental permit, such as on the expected timing for the specific environmental permit(s) sought and the type of information that would be needed to support the claim that the permit(s) is delayed beyond what could be considered a reasonable timeframe. A case-by-case approach for reviewing and

[29] Federal Permitting Improvement Steering Council, ''2020 Recommended Performance Schedules.'' Federal Infrastructure Permitting Dashboard. April 6, 2020. *https://www.permits.performance.gov/fpisc-content/recommended-performance-schedules.* Accessed August 28, 2023.

[30] Federal Permitting Improvement Steering Council, ''FAST–41 Fact Sheet.'' Federal Infrastructure Permitting Dashboard. September 13, 2022. *https://www.permits.performance.gov/documentation/fast-41-fact-sheet.* Accessed August 28, 2023.

approving the unreasonable delay exemption would help ensure the validity of individual claims, and ensure that all applicable waste emissions for each facility are subject to charge, as directed by Congress. However, the EPA decided not to propose such an approach due to the time and resource burden that would be required to administer such a process, for both covered entities and for the EPA. We expect that many types of permitting situations can arise, with many permutations. If industry were required to demonstrate unreasonable delay on a case-by-case basis, the EPA anticipates this review process would result in uncertainty for industry and could lead to a significant backlog, thus making the annual calculation of the WEC unduly burdensome. Therefore, in the interest of simplicity and making the exemption available in an efficient manner and without significant additional burden, the EPA proposes to rely on this threshold of a set period of months, in addition to the three other criteria, which can be more easily applied without detailed investigation. The EPA notes that in its verification process under the proposed approach it would review the submitted documentation to confirm that requirements are met for each facility reporting an unreasonable delay, and facilities determined to have not met the requirements would be required to submit any additional owed WEC obligation and relevant penalties.

Section II.D.1.c. below details the reporting requirements for this exemption which provide information necessary for verification of the exemption eligibility and exempted emission quantities.

We seek comment on these four criteria, each required to be met to determine emissions eligible for the unreasonable delay exemption. We seek comment on the use of responsiveness to requests regarding permitting by the permit applicant or the production segment facility experiencing delayed mitigation as a criterion. We seek comment on the use of 30 days to assess responsiveness where a specific timeframe for response is not provided. We seek comment on the criterion that exempted emissions are those resulting from flaring of gas that would have been mitigated without the permit delay, and that only flaring emissions that are in compliance with applicable regulations are eligible. We seek comment on the appropriate timeframe to be used as part of the four-factor test proposed today—specifically, what would be the best period of time (even if it is below or above the 30–42-month range EPA is leaning towards now) to use as a trigger for assessing unreasonable delay for the purposes of CAA section 136(f). We seek comment on the proposed use of one timeframe for eligibility versus an approach that might use different time frames for different types of permits. We seek comment on whether specific types of delays should be eligible or ineligible, which could be included as additional criteria or used in place of all or some of the proposed criteria. For example, we seek comment on whether we should establish that delays due to litigation regarding pipeline development are ineligible. We also seek comment on an alternative case-specific approach in which each facility with exempt emissions from unreasonable delay would provide additional facility- and permit-specific information, and in which the exemption would not be granted unless approved by the EPA. Finally, we seek comment on whether EPA should include additional criteria when defining the unreasonable delay exemption. For example, we seek comment on whether, in addition to the four criteria, we should add a criterion that entities show the flaring is necessary (*i.e.,* other options for beneficially use or reinject of gas were infeasible).

b. Calculation of Emissions Resulting From an Unreasonable Delay

Through the provisions proposed at 40 CFR 99.32, the EPA is proposing that exempted emissions are flaring emissions caused by the delay. We are proposing that exempted flaring emissions are the methane emissions (or a subset of the methane emissions) from flaring reported under subpart W.

To calculate the exempted emissions quantity, the entity must determine the time period associated with the emissions that occurred as a result of the delay within the filing year. The EPA is proposing that the delay begins when emissions would have been avoided through the operation of the gathering or transmission infrastructure, not when construction would begin, as in many cases the infrastructure would not be immediately in place and operational at the time of permitting approval. For example, a permit to construct might be needed before construction begins, and construction could take months or more before the infrastructure would be in place.

Where the exempted emissions cover the entire reporting year, the exempted flaring emissions would be the total reported to part 98 for flare stacks, associated gas flaring, and the portion of offshore methane emissions attributable to flaring. Where exempted emissions occur in only a fraction of a reporting year, the facility is to use data on flaring emissions over that time frame if available, and if unavailable, the facility is to adjust part 98 flaring emissions using the fraction of the year that the exemption is available. Where flared emissions impacted by permitting delay only account for a portion of the total flared emissions, the facility is to adjust their part 98 reported flaring emissions using company records and/or engineering calculations.

We seek comment on the provisions proposed, including the use of reported flaring emissions to determine exempted emissions, the use of part 98 data, and the approaches for quantifying emissions for fractions of the reporting year.

c. Reporting and Recordkeeping Requirements for the Exemption for Emissions Resulting From a Permit Delay

Through the provisions proposed at 40 CFR 99.31, the EPA is proposing that the WEC obligated party receiving the exemption would provide information on each well pad or offshore platform impacted by the delay. This includes the type of permit, permitting authority, and the date that the permit application was complete. The WEC obligated party must report the planned timing of the commencement of the offtake of gas had the permit not been delayed. This includes a listing of the methane emissions mitigation activities that are impacted by the delay and the flaring emissions associated with natural gas that would have been directed to gathering or transmission infrastructure as a result of the methane emissions mitigation activities. This also includes information on all applicable local, state, and Federal regulations regarding flaring emissions and the facility's compliance with each. The WEC obligated party must report the time period associated with the emissions that occurred as a result of the delay within the filing year. The WEC obligated party must also affirm that neither the production segment entity impacted by the delay nor the gathering or transmission infrastructure entity seeking the permit contributed to the unreasonable delay.

The EPA requires this information for the verification of exemption eligibility and of exempted emission quantity. Reported information will be used to conduct verification as discussed in section III.A.4., and reported information, records and other information as applicable will be used

to conduct any auditing that occurs under section III.E.1.

The EPA seeks comment on the reporting and recordkeeping requirements for the exemption for unreasonable delay in environmental permitting. We seek comment on whether additional information should be collected or retained to allow for verification of the quantity of emissions eligible for the exemption.

2. Regulatory Compliance Exemption Under CAA Section 136(f)(6)

CAA section 136(f)(6) establishes a regulatory compliance exemption for subpart W facilities that are ''subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111'' upon an Administrator determination that the criteria at CAA section 136(f)(6)(A) have been met. In this action, the EPA is proposing: when the Administrator determinations will be made; the time at which the regulatory compliance exemption would become available to eligible facilities; the process for how the Administrator determinations will be made; how to interpret CAA section 136(f)(6)(A) to govern the interaction between WEC applicable facilities and CAA section 111(b) affected facilities and CAA section 111(d) designated facilities (collectively referred to in this preamble as ''CAA section 111(b) and (d) facilities'') for the purposes of the regulatory compliance exemption; how ''compliance'' with the methane emissions requirements promulgated under CAA sections 111(b) and (d) will be defined for the purposes of the regulatory compliance exemption; reporting requirements for the regulatory compliance exemption; and the process for resumption of the WEC pursuant to CAA section 136(f)(6)(B) if the criteria for the regulatory compliance exemption are no longer met.

The EPA believes the Congressional intent of this exemption was twofold: (1) to be implemented such that the WEC acts as a bridge to full implementation of the Final NSPS OOOOb and EG OOOOc by encouraging methane reductions in the near term while state plans are being developed, and thereafter exempting from the charge facilities that are in compliance with the requirements pursuant to the final NSPS OOOOb and EG–OOOOc-implementing state and Federal plans,[31] and (2) to encourage timely implementation of requirements in the final NSPS OOOOb and EG OOOOc-implementing state and Federal plans in order to ensure that those requirements achieve meaningful emissions reductions. The EPA's proposed approach for implementing the regulatory compliance exemption is based on a plain reading of the statutory text in CAA section 136(f)(6). The EPA strives to create a program that is straightforward to implement and enforce.

The EPA interprets the intent of the WEC to be to incentivize reduction of methane emissions across the oil and gas industry. For industry segments not covered by NSPS OOOOb/EG OOOOc, the WEC incentivizes, but does not require, early and sustained emissions mitigation activity. For WEC applicable facilities in industry segments that are covered by NSPS OOOOb/EG OOOOc, the WEC incentivizes, but does not require, methane emissions reductions earlier than may otherwise be required pursuant to NSPS OOOOb and EG OOOOc-derived state and Federal plans. Once those requirements are in effect, the EPA believes the purpose of the regulatory compliance exemption is to provide relief from the WEC to owners or operators that are fully complying with those requirements, and to broadly encourage compliance. This structure ensures that there is an incentive (or requirement) for methane emission reductions from new and existing sources in place at all times, while also avoiding regulation of the same emissions under both the WEC and the NSPS OOOOb and EG OOOOc-implementing state and Federal plans once the regulatory compliance exemption becomes available.

The EPA expects that, as CAA section 111(b) and (d) facilities implement and comply with the methane emissions requirements of NSPS OOOOb and EG OOOOc-implementing state and Federal plans, many of the WEC applicable facilities that contain those emissions sources subject to NSPS OOOOb and EG OOOOc-derived state and Federal plans would be expected to fall below the waste emissions thresholds, and thus not be subject to the WEC. However, the regulatory compliance exemption recognizes that certain WEC applicable facilities may remain above the waste emissions thresholds even after implementation of the requirements in the final NSPS OOOOb and approved state and Federal plans under EG OOOOc; the regulatory compliance exemption would shield such owners or operators that are in compliance with those requirements from additional regulation under the WEC.

Congress provided that the regulatory compliance exemption would only come into effect after ''(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities'' and ''(ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by [the NSPS OOOOb/EG OOOOc 2021 Proposal], if such rule had been finalized and implemented.'' The EPA's understanding of these provisions is that Congress intended to provide an incentive for states to move promptly in adopting their plans, and to encourage those plans to achieve meaningful emissions reductions. These two drivers are manifested in the Administrator determinations that must be made before the regulatory compliance exemption becomes available: the first Administrator determination, per CAA section 136(f)(6)(A)(i), that the final NSPS OOOOb and all EG OOOOc-implementing state and Federal plans are ''approved and in effect''; and the second Administrator determination, per section 136(f)(6)(A)(ii), that the emissions reductions achieved by these requirements are equal to or greater than the reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal, had that rule been finalized and implemented as proposed (the ''equivalency determination''). These requirements mean that if the final NSPS OOOOb or EG OOOOc-implementing state or Federal plans are delayed, or the requirements therein are collectively less stringent than those in the NSPS OOOOb/EG OOOOc 2021 Proposal, the exemption would not be available and WEC applicable facilities that exceed

[31] Under the Tribal Authority Rule (TAR), eligible Tribes may seek approval to implement a plan under CAA section 111(d) in a manner similar to a state. See 40 CFR part 49, subpart A. Tribes may, but are not required to, seek approval for treatment in a manner similar to a state for purposes of developing a Tribal implementation plan (TIP) implementing the EG codified in 40 CFR part 60, subpart OOOOc. The TAR authorizes Tribes to develop and implement their own air quality programs, or portions thereof, under the CAA. However, it does not require Tribes to develop a CAA program. Tribes may implement programs that are most relevant to their air quality needs. If a Tribe does not seek and obtain the authority from the EPA to establish a TIP, the EPA has the authority to establish a Federal CAA section 111(d) plan for designated facilities that are located in areas of Indian country. A Federal plan would apply to all designated facilities located in the areas of Indian country covered by the Federal plan unless and until the EPA approves a TIP applicable to those facilities. In this proposal, all uses of the phrase ''state and Federal plans'' are intended to include any Tribal plans, to the extent that any Tribal plans are developed to implement EG OOOOc.

the waste emissions threshold would not be eligible for the regulatory compliance exemption from the WEC until the conditions are met.

Here, we summarize the proposed approach for the regulatory compliance exemption. Elements of the proposal, other options considered, and requests for comment are discussed in more detail in the sections below.

The EPA is proposing that the prerequisite Administrator determinations for the regulatory compliance exemption would be made after all state and Federal plans pursuant to CAA section 111(d) are approved and in effect. Separate from the timing of the Administrator determinations, the WEC program must establish when the regulatory compliance exemption becomes available at the facility level (*i.e.,* when eligible facilities can be exempted from the WEC), by defining when WEC applicable facilities that are subject to methane emissions requirements pursuant to NSPS OOOOb and EG OOOOc-implementing state and federal plans are in compliance with those requirements. The EPA believes that the regulatory compliance exemption is intended to provide relief from the WEC when the requirements in the final NSPS OOOOb and EG OOOOc-implementing state and Federal plans are in effect in all states. In this interest, the EPA is proposing that WEC applicable facilities would be eligible for the regulatory compliance exemption as soon as the Administrator determinations have been made, rather than when the applicable requirements in state and Federal plans are fully implemented. Thus, under the EPA's proposed approach, the regulatory compliance exemption would become available to facilities as soon as the Administrator determinations are made under CAA section 136(f)(6)(A)(i) and (ii).

The EPA is also proposing further elements of the process for the Administrator determinations under CAA section 136(f)(6)(A)(i) and (ii), including establishing the relative points of comparison for the equivalency determination, in order to ensure that those elements align with the statutory requirements. Because the Administrator determinations cannot be made until all plans are approved and in effect, and because the timing for both Administrator determinations is aligned, the EPA proposes that two the determinations be made together via a single future administrative action.

The EPA is proposing that a WEC applicable facility's eligibility for the regulatory compliance exemption would be based on the compliance status of all of the CAA section 111(b) and (d) facilities contained within that WEC applicable facility. To be eligible for the exemption, the EPA proposes that all of the regulated emissions sources must be in full compliance with their respective methane emissions requirements under the NSPS and EG-implementing state and Federal plans.

The EPA is also proposing reporting requirements for the regulatory compliance exemption. In order to reduce the burden on industry, the EPA proposes that only WEC applicable facilities that are eligible for the exemption would be required to report all associated data elements. Finally, the EPA is proposing how access to the regulatory compliance exemption would be removed for all WEC applicable facilities if the criteria associated with the Administrator determinations were no longer met. The EPA's proposed approach for removing access to the exemption mirrors the conditions that must be met in order for it to become available.

a. Timing for Regulatory Compliance Determinations

Before the regulatory compliance exemption becomes available to facilities, CAA section 136(f)(6)(A) requires determinations to be made by the Administrator that (1) ''methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities'' and (2) that ''compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the [NSPS OOOOb/EG OOOOc 2021 Proposal], if such rule had been finalized and implemented.'' The EPA believes that Congress intended these prerequisites to exemption availability to encourage timely implementation of the requirements in the final NSPS and state and Federal plans and to ensure that those requirements achieve meaningful emissions reductions.

The first Administrator determination is related to the timing of final methane emissions standards under CAA section 111(b) and state and Federal plans pursuant to an EG issued under CAA section 111(d). The EPA proposes to interpret the language in CAA section 136(f)(6)(A)(i) to mean that this temporal requirement is only met when *both* (1) emission standards for new sources under CAA section 111(b) are promulgated and in effect and (2) all state plans for existing sources pursuant to an EG issued under CAA section 111(d) have been approved by the EPA and are in effect. As to the latter element, the EPA also proposes to interpret the reference to ''plans pursuant to subsection. . . (d) of section 111'' to include the promulgation of a Federal plan where the EPA determines that one or more states have failed to submit an approvable state plan, as that is the only way a plan pursuant to CAA section 111(d) would take effect in those states. The EPA further proposes to interpret ''all states'' in CAA section 136(f)(6)(A)(i) to mean that every state with an applicable facility (*i.e.,* all states with subpart W facilities containing CAA section 111(b) or (d) facilities) must have an approved plan (state or Federal) before the determination can be made. Accordingly, because the emissions standards for new sources under CAA section 111(b) will be finalized before the submittal of state plans for existing sources under CAA section 111(d), approval of the final state (or Federal) plan for states with designated facilities would determine the timing for when the determination could be made under the proposed approach. The EPA proposes that this determination would be made after all CAA section 111(d) plans (*i.e.,* state or Federal plans) have been approved and are in effect. The EPA believes that the proposed approach and interpretation of ''all states'' is aligned with a plain reading of the statutory text. In particular, the EPA notes the relationship between the use of the singular in section 136(f)(6)(A), directing the EPA to make ''a determination'', and the requirements outlined in 136(f)(6)(A)(ii) and (ii), providing that this determination is dependent on EPA finding that (1) standards and plans ''have been approved and are in effect in all states'' and that (2) compliance with the standards and plans ''will result in equivalent or greater emissions reductions as would be achieved by the [2021] proposed rule. . .'' [32] The text strongly indicates that the EPA must make *one* determination after all standards and plans are in place in all states in order to make the exemption available, and further that the determination cannot be made until standards and plans are in place in all states because the equivalency determination must be made on a nationwide scale.[33]

[32] 42 U.S.C. 7436(f)(6)(A).

[33] Note that while the EPA believes that the statute instructs us to make a determination after the plans are collectively in place (rather than making multiple state-by-state determinations), that does not preclude the EPA from reviewing and

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The EPA considered an alternative approach for the determination that methane emissions standards and plans have been approved and are in effect in all states. This alternative would involve a determination for methane emissions standards after the promulgation of final emissions standards for CAA section 111(b) facilities and then determinations on a state-by-state basis as each state plan containing emissions standards for CAA section 111(d) facilities were submitted and approved by the EPA (or a Federal plan was promulgated where a state did not submit an approvable plan). The EPA believes that this state-by-state approach is inconsistent with a plain reading of CAA section 136(f)(6)(A)(i), which mandates that emissions standards and plans must be approved and in effect in *all* states with respect to the applicable facilities (*i.e.,* all states with subpart W facilities containing CAA section 111(b) or (d) facilities). The EPA requests comment on the proposed approach and an alternative approach that would make determinations on a state-by-state basis as each state plan was approved.

The second determination that must be made before the regulatory compliance exemption becomes available is whether the final ''methane emissions standards and plans'' provide equivalent or greater emissions reductions than would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal, had that proposal been finalized and implemented as proposed. Based on a plain reading of the statutory text, because plans pursuant to CAA section 111(d) will not be finalized for several years, the EPA cannot propose an equivalency determination in this action. Instead, we propose that the equivalency determination will be made via an administrative action after all CAA section 111(d) plans (*i.e.,* state or Federal plans) have been approved. This proposed timing would allow evaluation of the emissions reductions achieved by the final NSPS and by all final state and Federal plans.

The EPA also assessed making the equivalency determination for CAA section 111(b) affected facilities before making it for CAA section 111(d) designated facilities. In this proposal, the EPA interprets CAA section 136(f)(6)(ii) as requiring a comparison of the emissions reductions that will be achieved by the final NSPS OOOOb/EG OOOOc and the reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal if finalized as proposed. Separate equivalency determinations for CAA section 111(b) facilities and CAA section 111(d) facilities would not provide for a comparison of the total emissions reductions achieved by both rules, and therefore the EPA believes that an approach with separate equivalency determinations would be inconsistent with a plain reading of the statutory text. Further, because both determinations must occur before the exemption becomes available, and because under the proposed approach the determination required by CAA section 136(f)(6)(i) would occur after all plans are approved and in effect, there would be no practical reason for making the equivalency determination for CAA section 111(b) facilities before making it for CAA section 111(d) facilities. Finally, the only purpose for making the equivalency determination for CAA section 111(b) facilities before CAA section 111(d) facilities would be in support of an approach that would make the regulatory compliance exemption available to CAA section 111(b) facilities before CAA section 111(d) facilities. As discussed below in section II.D.2.b of this preamble, such an approach would not align with other elements of this proposal, would not be aligned with the statutory text, and would not be technically feasible. The EPA requests comment on this alternative approach.

b. Timing of Regulatory Compliance Exemption Availability

Separate from the timing of the Administrator determinations, the WEC program must also establish when the regulatory compliance exemption will become available for facilities. Different states will have different start dates and in some cases, phased-in requirements, in state or federal plans under 111(d), resulting in some facilities being in compliance with the methane emissions requirements pursuant to CAA section 111(b) and (d) before others. The EPA believes the inclusion of the regulatory compliance exemption at CAA section 136(f)(6)allows for relief from the WEC when the requirements in the final NSPS and state and Federal plans are in effect. The EPA therefore proposes that the regulatory compliance exemption would become available to all applicable facilities meeting the criteria when the Administrator determinations required by CAA section 136(f)(6)(A)(i) and (ii) have both been made. Both determinations are required before the exemption becomes available, and the determination under CAA section 136(f)(6)(A)(i) would indicate that the requirements promulgated under CAA sections 111(b) and (d) have been approved and are in effect. Because the availability of the exemption is linked to the CAA section 136(f)(6)(A)(i) and (ii) determinations, which the EPA is proposing could only be made after all states with an applicable facility have an approved state or Federal plan in effect, the EPA is proposing that the exemption would become available to all eligible WEC applicable facilities in all states at the same time. Moreover, because methane emissions standards for CAA section 111(b) facilities would be expected to come into effect earlier than those required for CAA section 111(d) facilities in state or Federal plans, the timing for exemption availability would be largely driven by the approval and effective date for the final state or Federal plan (*i.e.,* the last state with CAA section 111(d) facilities to have a plan approved and in effect).

The EPA believes the proposed approach is consistent with the statutory text. CAA section 136(f)(6)(A) states that charges shall not be imposed on an applicable facility ''that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111.'' In order to receive the exemption, all CAA section 111(b) and (d) facilities contained within a WEC applicable facility would need to demonstrate compliance, as discussed in section II.D.2.f. of this preamble.

This proposal makes the exemption available upon adoption of all plans pursuant to CAA section 111(d) and the issuance of the Administrator's findings under CAA section 136(f)(6)(A). The EPA proposes that the exemption be available as soon as all state or federal plans are in effect, because facilities can be in compliance with the requirements in plan even if full implementation of those requirements is not required until a future date. Provided that facilities subject to the WEC are in compliance with OOOOb requirements and the requirements in EG OOOOc-implementing plans, the proposed approach also allows such facilities to benefit from the regulatory compliance exemption much earlier than the alternative, described below, of making the regulatory compliance exemption available only once applicable compliance deadlines have passed.

The EPA notes that implementation of the requirements included in state or Federal plans may not be mandated immediately upon the date at which the plan goes into effect. In other words, the plans may include compliance

revising the determination if a standard or plan is later revised, to ensure that the conditions of section 136(f)(6)(A) are still met, consistent with the resumption of charge language in section 136(f)(6)(B).

schedules with compliance dates that occur at a future date after plan approval, and such requirements could be implemented over multiple compliance dates in a phased manner or include deadlines for various increments of progress. It is therefore possible for CAA section 111(d) facilities to be in compliance with the methane emissions requirements in a plan even if not all compliance dates included in the plan have come to pass. For example, if an approved state plan were to require a specific type of designated facilities to install emissions controls within a year of the effective date of the state plan, those facilities would be considered in compliance with those requirements for that first year. By providing the exemption as soon as the Administrator's determinations are made after state or Federal plans are approved and in effect rather than when the requirements in those plans must be implemented, the proposed approach would provide relief from the WEC once CAA section 111(d) facilities are effectively subject to federally enforceable methane emissions requirements pursuant to CAA section 111. The EPA requests comment on the proposed approach of making the regulatory compliance exemption available to all WEC applicable facilities at the time when the two determinations required by CAA section 136(f)(6)(A) have been made.

The EPA considered alternative approaches in developing this proposal for implementing the regulatory compliance exemption but found they would not be consistent with the statutory text, would be more challenging to implement, would unfairly advantage specific facilities and companies, or would not be technically feasible.

First, the EPA considered an approach that would make the exemption available to WEC applicable facilities meeting the criteria at a state-by-state level as the plan pursuant to CAA section 111(d) for each state was approved and became effective. For WEC applicable facilities that span multiple states, the exemption would be available when plans for all states in which the facility is located were approved and in effect. This alternative approach would likely make the exemption available earlier for certain WEC applicable facilities compared to the proposed approach, which would not make the exemption available until plans are approved and in effect in all states. The EPA believes that making the regulatory compliance available at a state-by-state level is inconsistent with the statutory text. As discussed in section II.D.2.a. of this preamble, the EPA's interpretation of CAA section 136(f)(6)(A) in this proposal is that neither of the determinations that are prerequisites to the regulatory compliance exemption's availability could be made until plans for CAA section 111(d) facilities have been approved and are in effect for all states. Based on this interpretation, it would not be possible for the exemption to become available on a state-by-state basis as state plans were approved and became effective because the prerequisite determinations could not occur until all state plans were approved and in effect. The EPA also believes the proposed approach will simplify implementation and administration of the regulatory compliance exemption compared to an approach in which the exemption would become available to states at different times. Further, a state-by-state application of the exemption could unfairly advantage and disadvantage WEC applicability facilities or companies based on their geographic location. WEC obligations for operations in states that take longer to develop state plans could be higher than those in states that are able to develop and have plans approved earlier, and thus have access to the exemption. Conversely, the proposed approach of making the exemption available to all states at the same time would be equitable and provide the industry with better regulatory certainty. The EPA requests comment on making the regulatory compliance exemption available on a state-by-state basis based on the finalization of plans for individual states.

Second, the EPA considered an approach that would make the regulatory compliance exemption available to WEC applicable facilities meeting the criteria when the methane requirements for all CAA section 111(b) and (d) facilities have been fully implemented. Under this alternative approach, WEC applicable facilities would only become eligible for the regularly compliance exemption once the compliance dates for the NSPS and the state and Federal plans have passed. Because the compliance deadlines under the final EG OOOOc may occur at some point *after* the timeline for state plan approval and issuance of a Federal plan, this alternative approach would make the regulatory compliance exemption available later than under the proposed approach. This would require the EPA to interpret the phrase ''subject to and in compliance with methane emissions requirements'' in CAA section 136(f)(A) to mean that the exemption from the charge is available only after all of the requirements for CAA section 111(d) facilities have been fully implemented. In other words, the EPA would read ''in compliance with methane emissions requirements'' to mean that *all* compliance dates in the NSPS and the state and Federal plans have passed. That might serve to give independent effect to both elements of the statutory phrase ''subject to and in compliance with'', but the EPA believes that this alternative approach is not as well aligned with the statutory directive. This is because compliance with the standards may occur at different points in time, both across the NSPS and the state and Federal plans, and even within standards that have phased compliance requirements. This interpretation may have the result of delaying availability of the regulatory compliance exemption for many years, even as facilities are otherwise complying with all *applicable* methane emissions requirements, thus extending the period for which many oil and gas operations would be subject to concurrent regulation under WEC and CAA section 111. Rather, the EPA proposes to conclude that CAA section 111(b) and (d) facilities can be considered to be in compliance with all applicable methane emissions requirements, even prior to the final compliance deadlines, for purposes of the regulatory compliance exemption. While the EPA is not proposing that the exemption would become available when the requirements of all state and Federal plans are fully implemented rather than when all state and Federal plans have been approved and are in effect, the agency requests comment on whether such an approach would be legally and practically justified.

Third, the EPA considered an approach that would make the regulatory compliance exemption available to WEC applicable facilities meeting the criteria at a state-by-state level as the final compliance deadline in a state or Federal plan for CAA section 111(d) facilities was reached. Under this alternative approach, WEC applicable facilities in a given state would have access to the exemption upon the final compliance date for CAA section 111(d) facilities in that state. Because state and Federal plans may establish different compliance timelines for CAA section 111(d) facilities, this approach could make the exemption available to states at different times. For WEC applicable facilities that span multiple states, the exemption would be available when the final compliance date passed in all

states in which the facility is located. As with the alternative approach that would make the exemption available after the final compliance deadline for CAA section 111(d) facilities had passed in all states, the EPA does not believe an approach that provides the exemption at a state-by-state level based on compliance dates is as consistent with the statutory text and purpose of the exemption for the reasons discussed in the prior paragraph. The EPA requests comment on an approach that would make the exemption available at a state-by-state level based on each state's final compliance deadline for CAA section 111(d) facilities.

The EPA also assessed an approach that would make the regulatory compliance exemption available to CAA section 111(b) facilities before CAA section 111(d) facilities. Because compliance with emission standards for CAA section 111(b) affected facilities generally apply upon the effective date of the final NSPS and would be required before emission standards for CAA section 111(d) designated facilities are fully implemented (once state or Federal plans are finalized and in effect), there would likely be several years between compliance with methane emissions requirements for CAA section 111(b) and (d) facilities. The EPA rejected this approach for this proposal, however, based on a plain reading of the statutory text. First, as discussed in section II.D.2.e. of this preamble, the exemption is applied to an entire WEC applicable facility, not the CAA section 111(b) and (d) facilities within that WEC applicable facility, and therefore individual CAA section 111(b) or (d) facilities within a WEC applicable facility cannot be exempted. Second, CAA section 136(f)(6)(A) states that waste emission charges shall not be imposed ''on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) *and* (d) of section 111.'' The EPA believes that a plain reading of this text indicates that compliance with regulations pursuant to both CAA section 111(b) and (d) must be achieved before the exemption becomes available, and that the statute therefore does not, by its terms, permit application of the exemption to CAA section 111(b) facilities before it becomes available to CAA section 111(d) facilities. As discussed in section II.D.2.a. of this preamble, the EPA proposes to make the determinations required by CAA section 136(f)(6)(A)(i) and (ii) after all state or Federal plans have been approved and are in effect. Because the determinations that are required for the exemption to become available would not be made separately for CAA section 111(b) facilities and CAA section 111(d) facilities, the exemption would not be available to CAA section 111(b) facilities before CAA section 111(d) facilities under the proposed approach.

Further, even assuming that this statutory text allowed for some ambiguity, there are practical limitations to implementing the regulatory exemption in a phased manner for CAA section 111(b) and (d) facilities. The WEC calculations are based on methane emissions and natural gas or oil throughput data for subpart W facilities that may contain both CAA section 111(b) and (d) facilities. Because reporting under subpart W does not distinguish between CAA section 111(b) and (d) facilities, there is currently no practical means of implementing a phased implementation of the regulatory compliance exemption. Revising the subpart W reporting requirements to make such distinctions would significantly increase the reporting complexity and burden for the oil and gas industry and would not be possible for certain emissions sources due to different definitions of individual emissions source types in subpart W and at CAA section 111(b) and (d) facilities. Further, while it may be feasible to distinguish emissions from new and existing sources for certain emission source categories, there is no means to distinguish natural gas throughput from CAA section 111(b) and (d) facilities at subpart W facilities that contain both CAA section 111(b) and (d) facilities.

c. Emissions Year in Which Exemption Takes Effect

While the data collected under subpart W for the purposes of WEC calculation are reported on a calendar-year basis (*i.e.,* a reporting year is a calendar year), the date at which all of the criteria for the regulatory compliance exemption will be met is not yet known and could fall at any point in the course of a reporting year. The EPA is proposing that the regulatory exemption will take effect in the reporting year in which the required conditions are met. For example, if all exemption requirements are met in June 2027, all eligible facilities meeting the proposed compliance requirements discussed in section II.D.2.f. of this preamble would be exempt from the WEC for the entire 2027 reporting year. The proposed approach is aligned with the EPA's interpretation that the regulatory compliance exemption is intended to prevent WEC applicable facilities from being subject to the WEC when their constituent CAA section 111(b) and (d) facilities are in compliance with their applicable standards. The EPA requests comment on the proposed approach, as well as an approach in which the regulatory compliance exemption became effective for eligible facilities in the next calendar year after which all required conditions are met (*e.g.,* if requirements are met in October 2027, the exemption would come into effect for the 2028 reporting year). The EPA also requests comment on an approach that would apply the regulatory exemption for a portion of the reporting year based on when all exemption requirements were met, and how reported emissions and throughput data could be quantified, such as through prorating.

d. Approach for Regulatory Compliance Determinations

In this action, the EPA is proposing certain elements related to the approach for the CAA section 136(f)(6)(A) Administrator determinations that must occur before the regulatory compliance exemption becomes available. The EPA is proposing that both determinations would be made simultaneously via a future administrative action. For the equivalency determination, the EPA is proposing the geographic scale at which the equivalency determination would be conducted and the specific elements that would be compared. The EPA proposes to address all other elements (*e.g.,* cumulative versus year-by-year) of the equivalency determination in a future administrative action when the analysis is conducted.

The EPA proposes that when the criteria for both determinations are met, the determinations would be made through a single administrative action. As discussed in section II.D.2.a. of this preamble, under the proposed approach neither determination could be made until all state and Federal plans pursuant to CAA section 111(d) have been approved and are in effect. Because the timing for both determinations would be aligned, the EPA believes that making both determinations via a single administrative action will facilitate timely access to the regulatory compliance exemption after the CAA section 136(f)(6)(A)(i) and (ii) requirements have been met. The EPA requests comment on the proposed approach for making both determinations via a single future administrative action, as well as on alternative approaches for making the determinations.

Section 136(f)(6)(A)(ii) of the CAA requires an Administrator determination

that compliance with the requirements in the final CAA section 111(b) and (d) rules ''will result in equivalent or greater emissions reductions as would be achieved by the [NSPS OOOOb/EG OOOOc 2021 Proposal], if such rule had been finalized and implemented.'' The EPA is proposing to conduct the analysis for the purposes of this equivalency determination at a national level, comparing the national-level emissions reductions that would have been achieved under the NSPS OOOOb/EG OOOOc 2021 Proposal (if finalized as proposed) against those that will be achieved upon implementation of the final NSPS OOOOb/EG OOOOc.

The EPA believes that a national evaluation is the most appropriate geographic scale for the purposes of the equivalency determination. The primary concern for the emissions reductions achieved by the NSPS OOOOb/EG OOOOc in the context of the WEC regulatory compliance exemption are methane emissions. Because the climate impacts of these emissions are dependent on their aggregate quantity rather than where they occur, a national-level evaluation will provide an appropriate comparison of the overall impact of the reductions that would have been achieved under the NSPS OOOOb/EG OOOOc 2021 Proposal and those that will be achieved upon implementation of the final NSPS OOOOb and state and Federal plans implementing OOOOc. The EPA also considers a national evaluation to be consistent with the statutory text in CAA section 136(f)(6)(A)(ii), which requires the Administrator's determination to be based on ''compliance with the requirements described in clause (i),'' where clause (i) describes the collective ''methane emissions standards and plans'' required by CAA sections 111(b) and (d).

The EPA assessed alternative approaches that would conduct the equivalency determination at the state-by-state level (*i.e.,* each state would need to demonstrate equivalent or greater emissions reductions) and at both the national and state-by-state levels. However, the EPA is not proposing an approach that would conduct the equivalency at the state-by-state level because the EPA believes that this approach is less consistent with the statutory text and purpose. Determinations for individual states would not indicate if the emissions reductions that will be achieved by the final NSPS and state and Federal plans are equivalent or greater than the reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal, had that rule been finalized and implemented. In other words, if the EPA were to make determinations for individual states and make the exemption available on a state-by-state basis, that could result in not achieving emission reductions equivalent to the NSPS OOOOb/EG OOOOc 2021 Proposal, thus undermining Congress' intent in drafting this provision to incentivize a minimum level of methane emission reductions via the CAA section 111(b) and (d) regulations. The EPA requests comment on the proposed approach of conducting the equivalency determination at the national scale. The EPA requests comment on conducting the equivalency determination at other geographic scales, such as a state-by-state level, as well as an approach that would require an equivalency determination at both the national and state-by-state levels.

The EPA also considered an alternative approach that would conduct the equivalency analysis at a source-by-source level (at either a national or state-by-state scale). Under this alternative approach, the EPA would compare the reductions achieved by individual sources under the NSPS OOOOb/EG OOOOc 2021 Proposal, had that rule be finalized and implemented, and the final NSPS OOOOb/EG OOOOc. As described above, the climate impacts of methane emissions are based on their aggregate quantity, and it is that quantity, therefore, that is necessary for conducting the equivalency determination. Within the specific context of the equivalency determination, it does not matter if the emissions reductions achieved by an individual source under the final NSPS OOOOb/EG OOOOc achieves fewer reductions than it would have under the NSPS OOOOb/EG OOOOc 2021 Proposal, as long as the total emissions reductions achieved by implementation of the final NSPS OOOOb and EG OOOOc-derived state or federal plans across all sources are equivalent or greater than those that would have been achieved across all sources by the NSPS OOOOb/EG OOOOc 2021 Proposal. The EPA therefore believes that it is not reasonable to conduct the equivalency analysis on a source-by-source level and such an approach is not required by the statutory text. However, the EPA requests comment on using a source-by-source approach for the equivalency determination and requests comment on how such an analysis could be conducted.

Because the NSPS OOOOb/EG OOOOc 2021 Proposal was not itself a final rule at the time Congress enacted this Waste Emissions Charge program, no new source emissions standards or emission guidelines had been finalized for CAA section 111(b) and (d) facilities based on the NSPS OOOOb/EG OOOOc 2021 Proposal, no requirements had been finalized for what constitutes an approvable state plan, and no states had submitted state plans pursuant to such hypothetical finalized requirements. As such, the EPA proposes to use the standards proposed in NSPS OOOOb and the presumptive standards proposed in EG OOOOc as the basis for evaluating emissions reductions that would have been achieved had the NSPS OOOOb/EG OOOOc 2021 Proposal been finalized and implemented. In other words, the EPA understands the inclusion of the NSPS OOOOb/EG OOOOc 2021 Proposal as the baseline for the equivalency demonstration to mean that Congress intended for the EPA to assume, for purposes of this analysis, that the proposed standards were finalized as drafted in the NSPS OOOOb/EG OOOOc 2021 Proposal and implemented nationwide. Further, because Congress directs the EPA to compare the emissions that would have been achieved if the NSPS OOOOb/EG OOOOc 2021 Proposal were finalized and implemented against actual CAA section 111(b) and (d) standards once these are finalized and in effect, the EPA believes that Congress must have meant the EPA to assume that the NSPS OOOOb/EG OOOOc 2021 Proposal was finalized and implemented *as proposed,* which is the only way to use it as a point of comparison. Accordingly, for CAA section 111(b) facilities under the NSPS OOOOb/EG OOOOc 2021 Proposal, the EPA proposes to assess the reductions that would have been achieved had the proposed NSPS OOOOb been finalized and implemented. For CAA section 111(d) facilities under the NSPS OOOOb/EG OOOOc 2021 Proposal, the EPA proposes to assess the reductions that would have been achieved had the proposed emissions guidelines been adopted and implemented by all states as proposed.

The EPA believes the proposed points of comparison between the NSPS OOOOb/EG OOOOc 2021 Proposal and the final NSPS OOOOb and final requirements in state and Federal plans derived from EG OOOOc for the equivalency is aligned with a plain reading of CAA section 136(f)(6)(A), and with Congressional intent. The EPA requests comment on the proposed approach. The EPA recognizes that if the NSPS OOOOb/EG OOOOc 2021

Proposal had been finalized as proposed, the requirements for CAA section 111(d) facilities, and the emissions reductions associated with those requirements, would have been based on approved state or Federal plans. In those plans, it is possible that some states may have set different standards of performance than the presumptive standards proposed in EG OOOOc based on a provision of CAA section 111(d)(1) permitting states to ''take into consideration, among other factors, the remaining useful life of a source.'' (The EPA refers to this provision as the ''remaining useful life and other factors'' provision, or RULOF.) The EPA regulations at 40 CFR part 60 subpart Ba permit states to consider several factors to, with an adequate demonstration, establish standards less stringent than the degree of emission limitation otherwise required by an EG. In such circumstances, the emissions reductions achieved by those state plans would have been less than if the state plans had adopted and implemented the presumptive standards in the final emissions guidelines, had they been finalized. However, because state plans were never developed pursuant to the NSPS OOOOb/EG OOOOc 2021 Proposal, there is no means of reasonably estimating the requirements that may have been included in those state plans and what emissions reductions they would have achieved. The text also counsels against making RULOF assumptions in this case. Because Congress directs the EPA to compare the emissions that would have been achieved if the NSPS OOOOb/EG OOOOc 2021 Proposal were ''finalized and implemented'' against actual CAA section 111(b) and (d) standards once these are ''approved and in effect,'' the EPA believes that Congress meant the Agency to assume that the NSPS OOOOb/EG OOOOc 2021 Proposal was finalized and implemented *as proposed,* because that will allow for comparison with emissions reductions achieved under the final CAA section 111(d) plans, which may differ from the proposal in a variety of ways, including as a result of RULOF analysis. It is also reasonable to infer that Congress wanted to guarantee the level of reductions (*i.e.,* ''equivalent or greater'' [34] than expected by the NSPS OOOOb/EG OOOOc 2021 Proposal) that would ultimately be achieved by the final NSPS OOOOb and EG OOOOc-derived state and Federal plans by only allowing for the exemption if it is determined that the Final NSPS OOOOb/EG OOOOc would achieve at least the level of reductions that were expected from the proposed rule in place at the time CAA section 136 was written and passed. Thus, the EPA believes the intent of CAA section 136(f)(6)(A) is to use the proposed approach of assessing the reductions that would have been achieved had the proposed emissions guidelines in the NSPS OOOOb/EG OOOOc 2021 Proposal been adopted *and* implemented by all states as proposed. The EPA requests comment on other approaches that could be used to estimate the emissions reductions from CAA section 111(d) facilities had the NSPS OOOOb/EG OOOOc 2021 Proposal been finalized and implemented.

The EPA also recognizes that in the proposed approach for the equivalency determination, analysis of the reductions from CAA section 111(d) facilities under the NSPS OOOOb/EG OOOOc 2021 Proposal would be based on universal adoption of the presumptive standards in the proposed emissions guidelines, while analysis of the reductions achieved by state and Federal plans developed pursuant to the final EG OOOOc would account for any states' use of the RULOF provision to set less stringent standards. The EPA believes the proposed approach of assessing the reductions achieved by final state and Federal plans is aligned with the statutory text and Congressional intent. CAA section 136(f)(6)(A)(ii) states that the point of comparison for the emissions reductions that would have been achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal are those resulting from ''compliance with the requirements described in clause (i).'' CAA section 136(f)(6)(A)(i) in turn refers to the ''methane emissions standards and *plans* pursuant to subsections (b) and (d) of section 111.'' The EPA's proposed approach to use the reductions that will be achieved by approved state and Federal plans in the equivalency determination is based on the use of ''plans'' in CAA section 136(f)(6)(A)(i). Further, CAA section 136(f)(6)(A)(ii) establishes that EPA may not make the equivalency determination unless and until it can establish that ''compliance with the requirements described in clause (i) *will result in equivalent or greater emissions reductions* as would be achieved by the [NSPS OOOOb/EG OOOOc 2021 Proposal].'' [35] As similarly noted above, it is reasonable to infer from this language that Congress intended to guarantee that a minimum level of emissions reduction would be achieved by implementation of the CAA section 111 standards before the exemption became available—and because application of the RULOF provision may result in less stringent standards, Congress could not guarantee this minimum level would be achieved unless the equivalency determination considered the reductions actually achieved by the final NSPS and the standards actually set in state plans, including any standards set pursuant to the RULOF provision.

The EPA considered an approach which would compare the NSPS OOOOb/EG OOOOc 2021 Proposal, as proposed, with the final NSPS OOOOb/EG OOOOc as finalized but before implementation and consideration of RULOF, but ultimately rejected this approach. Although this approach would be relatively simple to apply, not taking into account the actual standards adopted in the state plans cannot lead to a sound conclusion about whether the emission reduction target that the statute sets will actually be met in practice. In other words, this approach could not guarantee that the ''result'' of implementation of the plans will be equivalent reductions, as the statute requires the EPA to determine. Further, CAA section 136(f)(6)(A)(ii) states that ''compliance'' with the standards should result in equivalent emissions reductions, but in practice, sources are not required to comply with the EG; instead, sources must comply with standards later established in state or federal plans. For these reasons, the EPA believes that comparing the NSPS OOOOb/EG OOOOc 2021 Proposal with the final NSPS OOOOb/EG OOOOc as finalized, but before implementation, is not as well aligned with the statutory text and intent of Congress. The EPA requests comment on its proposed approach and other approaches that could be used to estimate the emissions reductions that will be achieved by plans pursuant to CAA section 111(d), including comparing the NSPS OOOOb/EG OOOOc 2021 Proposal with the final NSPS OOOOb/EG OOOOc before implementation and consideration of RULOF.

The EPA reviewed comments on this topic submitted in response to the NSPS OOOOb/EG OOOOc 2022 Supplemental Proposal. Those comments informed the EPA's proposed approach and alternative approaches. While those comments were considered in the development of this proposal, because they were submitted in response to a

[34] 42 U.S.C. 7436(f)(A)(ii) (requiring a determination by the Administrator that ''compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by [the 2021 proposal]''.)

[35] 42 U.S.C. 7436(f)(6)(A)(ii) (emphasis added).

separate rulemaking, any duplicative or additional comments on this topic must resubmitted in response to this proposal in order to be considered in the development of the final WEC rule.

e. Application of the Regulatory Compliance Exemption to Subpart W Facilities

CAA section 136(f)(6)(A) states: ''[c]harges shall not be imposed pursuant to subsection (c) on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111'' upon an Administrator determination that ''(i) methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in all States with respect to the applicable facilities; and (ii) compliance with the requirements described in clause (i) will result in equivalent or greater emissions reductions as would be achieved by the'' NSPS OOOOb/EG OOOOc 2021 Proposal.

The EPA notes that an applicable facility in CAA section 136(d) is an entire site or collection of sites, each of which contains individual emissions sources. In contrast, the terms ''affected facility'' [36] and ''designated facility'' [37] are used by the EPA in the NSPS and EG regulations, respectively, to refer to an individual emissions source or a group of emissions sources at a site (*e.g.,* a storage tank battery or a collection of pneumatic controllers) to which a standard applies. A single subpart W facility may contain hundreds or thousands of CAA section 111(b) and (d) facilities. The EPA proposes to interpret and implement the regulatory compliance exemption such that an applicable subpart W facility that contains any CAA section 111(b) or (d) facilities would be eligible for the exemption once all other criteria are met (*i.e.,* the Administrator determinations and proposed compliance elements in 40 CFR 99.40). Table 3 shows the subpart W industry segments applicable to the WEC that may contain CAA section 111(b) or (d) facilities. WEC applicable facilities in the offshore production, LNG storage, LNG import and export, and transmission pipeline industry segments do not contain CAA section 111(b) or (d) facilities under the Crude Oil & Natural Gas source category (or any other source category in 40 CFR part 60) and would not be eligible for the regulatory compliance exemption. The EPA proposes that if any future NSPS/EG rules are finalized such that additional industry segments contain CAA section 111(b) or (d) facilities, the WEC applicable facilities in those segments would be eligible for the regulatory compliance exemption.

TABLE 3—SUBPART W INDUSTRY SEGMENT AND CAA SECTION 111(b) AND (d) FACILITY OVERLAP

Subpart W industry segment subject to WEC	May contain CAA Section 111(b) and/or (d) facilities?
Onshore petroleum and natural gas production	Yes.
Offshore petroleum and natural gas production	No.
Onshore petroleum and natural gas gathering and boosting	Yes.
Onshore natural gas processing	Yes.
Onshore natural gas transmission compression	Yes.
Onshore natural gas transmission pipeline	No.
Underground natural gas storage	Yes.
LNG import and export equipment	No.
LNG storage	No.

The EPA assessed other potential interpretations of the regulatory compliance exemption while developing the proposed approach. In particular, the EPA assessed an approach that would instead only exempt the emissions from individual CAA section 111(b) and (d) sources, rather than the emissions of the entire subpart W facility. For example, if certain pneumatic devices are regulated under NSPS OOOOb/EG OOOOc pursuant to CAA sections 111(b) and (d), all reported pneumatic device methane emissions from a subpart W facility would be subtracted from that facility's reported emissions. Under this approach, only emission sources at subpart W facilities that are not also CAA section 111(b) and (d) facilities (*e.g.,* methane slip from engines) would be considered when determining if a facility was above or below the waste emissions threshold. While this approach would exempt emissions associated with individual CAA section 111(b) and (d) facilities that are in compliance with the standards, as anticipated by the language in CAA section 136(f)(6)(A), the EPA does not believe that this approach would be consistent with the other text in that provision that is clear that the exemption applies to the ''applicable facility,'' which CAA section 136(d) defines as an entire subpart W facility. Further, we do not believe that it would be practical to implement the regulatory compliance exemption in this manner because the individual emissions source types in subpart W do not always align with the individual CAA section 111(b) and (d) facilities. Exempting methane emissions from individual subpart W source types that have a similar name as a CAA section 111(b) or (d) facility may exclude a broader or narrower scope of equipment or components and associated emissions than those subject to the NSPS OOOOb/EG OOOOc. Methane emissions from CAA section 111(b) or (d) facilities therefore cannot be directly subtracted from reported subpart W data.

We request comment on the proposed approach for applying the regulatory compliance exemption to subpart W facilities and the proposed interpretation of the relevant statutory text. We also request comment on extending the regulatory compliance exemption to facilities in industry segments not currently covered by NSPS OOOOb/EG OOOOc requirements, in the event that such regulations pursuant to CAA 111(b) and (d) are finalized in the future. We recognize that the proposed approach to exempt entire subpart W facilities results in the

[36] ''Affected facility'' is defined for purposes of an NSPS at 40 CFR 60.2 to mean ''with reference to a stationary source, any apparatus to which a standard is applicable.''

[37] ''Designated facility'' is defined for purposes of an EG at 40 CFR 60.21a to mean ''any existing facility. . . which emits a designated pollutant and which would be subject to a standard of performance for that pollutant if the existing facility were an affected facility.''

exemption of methane emissions from sources that are not subject to NSPS OOOOb/EG OOOOc. While we believe the proposed approach is the most consistent with the language in CAA section 136(f)(6), we request comment on alternative interpretations.

f. Determining Eligibility With Respect to CAA Section 136(f)(6)(A)

It is expected that for many WEC applicable facilities, implementing NSPS OOOOb/EG OOOOc requirements would reduce methane emissions to levels below the waste emissions thresholds. The EPA interprets the regulatory compliance exemption as intending to provide relief from the WEC for WEC applicable facilities that remain above the waste emissions threshold even when their constituent CAA section 111(b) and (d) facilities (*i.e.,* emissions sources) are in full compliance with their applicable methane emissions requirements. This structure provides a further incentive for compliance with applicable requirements.

The EPA proposes that the regulatory compliance exemption would only be available to WEC applicable facilities that exceed the waste emissions threshold. CAA section 136(f)(6)(A) states that ''charges shall not be imposed pursuant to subsection (c) on an applicable facility'' that meets the requirements of the regulatory compliance exemption. Subsection (c) in turn states that a charge shall be collected ''on methane emissions that exceed an applicable waste emissions threshold.'' Based on a plain reading of the statutory text, the EPA proposes that the exemption would not apply to WEC applicable facilities below the waste emissions threshold. Further, providing the exemption to WEC applicable facilities below the waste emissions threshold would serve no purpose as these facilities would not have positive WEC applicable emissions and therefore would not benefit from the exemption. Excluding facilities below the waste emissions threshold from the exemption would also reduce the reporting burden for those facilities, which would not be required to report information related to CAA section 111(b) and (d) compliance status.

As discussed in this section, CAA section 136(f)(6)(A) does not specify the definition of compliance for the purposes of the exemption, and many different types of compliance deviations or violations can occur. The EPA is therefore proposing what actions constitute compliance with a methane emissions requirement, pursuant to CAA section 136(f)(A), for the purposes of implementing the regulatory compliance exemption. The EPA's proposed approach is intended to provide a clear threshold for establishing compliance status and eligibility for the exemption while minimizing the burden on industry and facilitating ease of implementation. The EPA is also proposing related reporting requirements for WEC applicable facilities that are necessary to implement the regulatory compliance exemption (see section II.D.2.g. of this preamble).

CAA section 136(f)(6)(A) states that the WEC shall not be imposed ''on an applicable facility that is subject to and in compliance with methane emissions requirements pursuant to subsections (b) and (d) of section 111.'' For the purpose of determining WEC facility eligibility for the regulatory compliance exemption, the EPA proposes that the compliance status of CAA section 111(b) and (d) facilities contained within a WEC applicable facility would be assessed based on compliance with the applicable methane emissions requirements for the Oil & Natural Gas Source Category (40 CFR part 60, subparts OOOOa, OOOOb, and OOOOc).

Further, the EPA proposes that should additional NSPS/EG regulations for the oil and natural gas industry source category be finalized in the future, compliance with the methane emissions requirements in those regulations would be assessed for determining eligibility for the regulatory compliance exemption. As discussed in section II.D.2.h. of this preamble, the regulatory compliance exemption could become unavailable if future NSPS/EG revisions result in a situation such that those revisions, upon implementation, result in fewer emissions reductions than achieved by the NSPS OOOOb/EG OOOOc 2021 Proposal, had that proposal been finalized and implemented. Similarly, the exemption could be reinstated upon adoption and implementation of NSPS/EG revisions that restore emissions reduction equivalency with, or improvement upon, the NSPS OOOOb/EG OOOOc 2021 proposal. In such cases where a future NSPS/EG rule only applies to equipment in a segment of the oil and natural gas industry not covered by an existing NSPS/EG rule, the EPA proposes that any WEC applicable facilities with existing access to the regulatory compliance exemption would maintain that access. In other words, the ''all states'' requirement in CAA section 136(f)(6)(A)(i) would be assessed separately for the additional equipment covered by the new NSPS/EG, and any existing access to the exemption would not be lost while the determination is being made that CAA section 111(d) plans pursuant to the new EG rule were approved and in effect.

The EPA requests comment on its proposed approach for how NSPS OOOOa, NSPS OOOOb, and EG OOOOc should be considered for the purposes of the regulatory compliance exemption. The EPA also requests comment on its proposed approach in light of any potential future NSPS/EG rules for the oil and natural gas industry source category, or any other additional source category that might cover emissions sources at a WEC affected facility, and the role of any such future methane emissions requirements in determining eligibility for the regulatory compliance exemption.

The EPA proposes that any WEC applicable facility that contains CAA section 111(b) or (d) facilities would receive the regulatory compliance exemption if each of the CAA section 111(b) and (d) facilities that constitute the WEC applicable facility has no deviations or violations of the methane emissions requirements promulgated pursuant to the applicable NSPS or EG-implementing state and Federal plans. The EPA is proposing that this compliance requirement would apply for each CAA section 111(b) or (d) facility for each reporting year for the WEC applicable facility. For example, if all CAA section 111(b) or (d) facilities contained in a WEC applicable facility were in compliance with the applicable methane emissions requirements during a particular reporting year, the regulatory exemption would apply for that reporting year. If any CAA section 111(b) or (d) facilities contained in a WEC applicable facility in the respective reporting year were not in compliance with emissions requirements, the regulatory exemption would not apply for that reporting year. The EPA proposes that if a WEC applicable facility were to lose access to the regulatory compliance exemption in a reporting year due to a deviation or violation in that reporting year, it would be able to receive the exemption in any subsequent reporting year if there were no deviations or violations in that applicable reporting year.

The EPA is proposing that a WEC applicable facility would not be eligible for the regulatory compliance exemption if any CAA section 111(b) or (d) facility that is contained within the WEC applicable facility has one or more deviations or one or more violations of any methane emissions requirement under the applicable NSPS or state or Federal plan issued pursuant to the EG.

The EPA recognizes that there are many potential elements to compliance with the methane requirements promulgated under CAA sections 111(b) and (d), such as compliance with a quantitative emissions limit and compliance with work practice standards, as well as multiple monitoring, recordkeeping, and reporting requirements. The EPA proposes to find that a deviation or violation from any of the methane requirements promulgated under CAA sections 111(b) and (d) constitutes non-compliance for purposes of the regulatory compliance exemption. The EPA believes that this approach is most consistent with the plain language of CAA section 136(f)(6)(A), which states that charges shall not be imposed on a facility that is ''*subject to and in compliance with* methane emissions requirements pursuant to subsections (b) and (d) of section 111.'' [38] First, Congress made clear that it is not enough for a particular facility to be subject to methane regulations; each facility must also comply with those regulations. And in establishing what it means to comply, Congress did not employ any mitigating language. It is not enough to be ''substantively'' in compliance, for example, or ''in compliance with all major requirements''. Facilities must be ''in compliance with requirements'' pursuant to 111(b) and (d).

The EPA evaluated several alternative criteria for the regulatory compliance exemption eligibility. Another interpretation could be to apply a threshold, such as specific quantitative threshold requirements, for the regulatory compliance exemption. For example, the EPA might specify that a WEC applicable facility would still be deemed to be in compliance for purposes of the regulatory compliance exemption where the number of deviations or violations, or a quantity of excess emissions, fall below a specified threshold, as applied for all the CAA section 111(b) and (d) facilities contained in a WEC applicable facility. However, for the reasons discussed in the following paragraph, the EPA is not proposing this alternative.

Deviations from or violations of any compliance requirements can vary significantly in severity and impact, as well as frequency. For example, a WEC applicable facility could contain many CAA section 111(b) and (d) facilities with numerous deviations that, even collectively, result in a small amount of excess emissions. Another WEC applicable facility could contain a single CAA section 111(b) or (d) facility with a single deviation or violation that resulted in methane emissions significantly exceeding those that would have resulted had the CAA section 111(b) or (d) facility been in compliance with its methane emissions requirements. Violations of the emission standards are not the only violations that may be significant. Violations of monitoring requirements can be very serious, given that failure to do monitoring, or doing it incorrectly, can result in significant emissions not being discovered or corrected. Reporting violations can also be very serious, if they result in government being unaware of significant problems and thus unable to address them. For these and many other reasons, there is often no easy way to determine the seriousness of particular violations without fact specific and resource intensive investigation. Given that deviations from and violations of requirements for emission standards under CAA section 111(b) and of state or Federal plan requirements under CAA section 111(d) can vary in type, severity, and frequency, and given that CAA section 136(f)(A) does not further specify what constitutes compliance for the purpose of the regulatory compliance exemption, the EPA is not proposing a specific quantitative threshold requirement for the regulatory compliance exemption (*e.g.,* number of violations or quantity of excess emissions).

Because under the statute the availability of the regulatory compliance exemption requires two threshold findings, including that all plans are approved and in effect, the exemption would not be available until several years after finalization of the WEC rule. See the discussion in section II.D.2.b of this preamble regarding the proposed approach for timing of the regulatory compliance exemption availability. With the exception of several sources (*e.g.,* combustion emissions for certain industry segments), most methane emission sources in covered industry segments required to report emissions under subpart W would also be subject to the CAA section 111(b) or (d) methane requirements promulgated in the final NSPS OOOOb and the plans issued and approved under EG OOOOc. The EPA expects that, as oil and gas operations implement the requirements of final NSPS OOOOb and the plans issued and approved pursuant to EG OOOOc (and undertake other methane mitigation voluntarily or due to other Federal or state regulations), total reported subpart W facility methane emissions would decline.

For many WEC applicable facilities, if the CAA section 111(b) and (d) facilities contained within a WEC applicable facility are in compliance with methane requirements promulgated under CAA sections 111(b) and (d), the WEC applicable facility would likely be below the waste emissions threshold. The Agency therefore expects that even if CAA section 111(b) or (d) facilities within these WEC applicable facility have compliance deviations, these WEC applicable facilities will likely remain below the waste emissions thresholds. In the alternative, the EPA expects that cases of significant or widespread compliance deviations or violations with the requirements promulgated under CAA section 111(b) or (d) could result in emission levels for a WEC applicable facility that could exceed the waste emissions thresholds. Because many WEC applicable facilities are expected to be below the waste emissions threshold when the regulatory compliance exemption becomes available, the EPA expects that deviations or violations will not have a significant impact for these facilities—they would not be eligible for the exemption not only because they are out of compliance, but also because they are below the waste emissions threshold, and there is no charge to exempt in that case.

The EPA requests comment on the proposed provisions for determining ''compliance'' for the purposes of the regulatory compliance exemption and the alternative approaches the agency considered. The EPA requests comment on specific criteria (*e.g.,* types of deviations or violations, quantitative thresholds) that could be applied to determine compliance with methane emissions requirements promulgated under CAA sections 111(b) and (d) for the purpose of assessing WEC applicable facility eligibility for the regulatory compliance exemption. The EPA requests comment on whether the criteria should consider whether the deviation or violation resulted in excess emissions, as demonstrated by monitoring and other data. The EPA also requests comment on excluding WEC applicable facilities below the waste emissions threshold from the regulatory compliance exemption.

g. Reporting and Recordkeeping Requirements for the Regulatory Compliance Exemption

We are proposing a reporting requirement at 40 CFR 99.7(b)(2)(iv) that would require that once the Administrator has made a determination that the requirements in CAA section 136(f)(6)(A) have been met, information

[38] 42 U.S.C. 7436(f)(6)(A).

related to the regulatory compliance exemption must be included in the WEC filing submitted by the WEC obligated party for each WEC applicable facility exceeding the waste emissions threshold that contains any CAA section 111(b) and (d) affected facilities. CAA section 136(f)(6)(A) mandates that the EPA shall not impose a charge upon WEC applicable facilities that qualify for the regulatory compliance exemption. The proposed approach for implementing the regulatory compliance exemption would make facilities that are below the waste emissions threshold ineligible for the exemption. The EPA therefore proposes that WEC obligated parties would not be required to report information related to the compliance status of CAA section 111(b) and (d) facilities contained within WEC applicable facilities for WEC applicable facilities that are below the waste emissions threshold.

The reporting requirements for facilities with the regulatory compliance exemption are proposed at 40 CFR 99.42. We are proposing that the filing would include a representation of the NSPS and state and Federal plan compliance status for each CAA section 111(b) and (d) facility located within a WEC applicable facility during the reporting year. This representation of compliance status would indicate whether the facility was in full compliance for the entirety of the reporting year (*i.e.,* for each CAA section 111(b) and (d) facility, there were no violations or deviations), or whether there were one or more deviations or violations during the reporting year. For facilities that meet all eligibility requirements for the exemption, we are proposing to require reporting of the ICIS–AIR ID (or if unavailable, the facility registry service (FRS) ID and EPA Registry ID from CEDRI) reporting identifiers for each CAA section 111(b) and (d) facility located at the WEC applicable facility. These identifiers are information necessary for the EPA to assess the accuracy of the representation of compliance status through linkages to reports and emissions and compliance data for each CAA section 111(b) and (d) facility located at the WEC applicable facility.

As supporting documentation for the representation of compliance status of WEC applicable facilities that are eligible for the exemption but were not in full compliance for the entirety of the reporting year, we are proposing to require the submittal of one report associated with the CAA section 111(b) and (d) facilities located within the WEC applicable facility that documents a deviation or violation during the reporting year. As supporting documentation for the representation of compliance status of WEC applicable facilities that are eligible for the exemption and that were in full compliance for the entirety of the reporting year, we are proposing to require the submittal of report(s) associated with the CAA section 111(b) and (d) facilities located within the WEC applicable facility. The EPA recognizes that the compliance certification period for CAA section 111(b) and (d) facilities may not align with the reporting year for which the filing is being completed and that at the time of the WEC filing due on March 31 of each year, report(s) covering the complete preceding reporting year for WEC filing may not be available. To accommodate for these cases where a report is not available for the complete reporting year of WEC filing, the EPA is proposing that the WEC obligated party would provide the report, if available, that covers a portion of the year, identify the period of time covered by the report, and for the remainder of the year provide a representation of compliance status for each CAA section 111(b) and (d) facility at the WEC applicable facility that is not included in the submitted report. It also is possible that the complete calendar year of WEC filing is covered by two annual reports, each covering a portion of the calendar year. In this case, the WEC applicable facility should submit both annual reports. The EPA further recognizes that a WEC applicable facility may contain CAA section 111(b) and (d) facilities that first became subject to requirements under CAA sections 111(b) and (d) during the reporting year associated with the filing and for which the first year of compliance is not completed. For these CAA section 111(b) and (d) facilities, we are proposing to require that the filing identify the type of facility, that date that it became subject, and a representation of the compliance status for the portion of the year in which it was subject to requirements under CAA sections 111(b) and (d). In cases where the initial filing does not include a report covering the entire reporting year, we are proposing to require that the WEC obligated party provide a revised filing once such a report becomes available. The EPA is proposing that this revised filing under the WEC rule would be required to be made on or before the date that the compliance report covering the remainder of the year would be due under the applicable requirements of CAA section 111(b) or (d). The deadlines for filing revisions to WEC filings as discussed in section III.A.4. do not apply for the submittal of compliance reports.

The EPA requires this information for the verification of exemption eligibility. Reported information will be used to conduct verification as discussed in section III.A.4., and reported information, records and other information as applicable will be used to conduct any auditing that occurs under section III.E.1.

The EPA is aware that this proposed reporting program may result in cases where a WEC obligated party makes a good-faith representation that each CAA section 111(b) and (d) facility at the WEC applicable facility is in compliance but later independently discovers the existence of one or more deviations or violations. In this proposed rulemaking, such independent discoveries would be considered to be substantive errors within the WEC filing. Proposed 40 CFR 99.7(e)(1) would require submittal of a revised WEC filing within 45 days of the discovery that a previously submitted WEC filing contains a substantive error. Provided that timely submittal of a revised filing is made, if a revised regulatory compliance exemption filing results in the imposition of WEC obligation from a WEC applicable facility that previously qualified for exemption, we are proposing that the WEC obligated party would not be subject to interest penalties normally assessed for payments made after March 31, as discussed in section III.B.1. of this preamble.

However, later discoveries of deviations or violations by the EPA or another regulatory authority, or discoveries as a result of investigation by the EPA or another regulatory authority (including information requests), are not treated the same way as errors. Where a WEC obligated party represents that each CAA section 111(b) and (d) facility at the WEC applicable facility is in compliance, but the EPA or another regulatory authority subsequently discovers the existence of one or more deviations or violations, or the CAA section 111(b) and (d) facility identifies the deviation or violation as a result of an EPA investigation (including information requests), the WEC obligated party may be subject to enforcement and required to pay any outstanding WEC fees and interest penalties. False statements may be subject to criminal enforcement.

The EPA seeks comment on the reporting and recordkeeping requirements for the regulatory compliance exemption. We seek

comment on whether additional information should be collected or retained to allow for verification of eligibility for the exemption.

h. Resumption of WEC Under CAA Section 136(f)(6)(B)

CAA section 136(f)(6)(B) states that if, at any point after the Administrator has made the determination required by CAA section 136(f)(6)(A), the conditions for such determination are no longer met, the regulatory compliance exemption ceases to apply. Because the EPA proposes to determine that the regulatory compliance exemption is only available if *all states* are subject to standards and plans pursuant to CAA sections 111(b) and (d) that are, collectively, equivalent to the NSPS OOOOb/EG OOOOc 2021 Proposal, the EPA proposes that all WEC applicable facilities would lose access to the exemption if either of the conditions in CAA section 136(f)(6)(A) ceased to apply. For example, if a state plan were legally challenged and vacated after the initial determination, plans would no longer be approved and in effect in all states, and the regulatory compliance exemption would no longer be available. Similarly, if after the initial equivalency determination methane emissions requirements promulgated under CAA section 111(b) or (d) were modified such that they no longer resulted in equivalent or greater aggregate emissions reductions than the NSPS OOOOb/EG OOOOc 2021 Proposal, the exemption would no longer be available. Note that in addition to future revisions to EG, revisions to the requirements in individual state plans pursuant to CAA section 111(d) could also result in a situation in which implementation of the final NSPS and state or federal plans does not achieve equivalent or greater emissions reductions compared to the 2021 NSPS OOOOb/EG OOOOc Proposal. (The conditions under which an individual WEC applicable facility would receive or become ineligible for the regulatory compliance exemption while the conditions in CAA section 136(f)(6)(A) are still met are discussed in section II.D.2.f. of this preamble.) The EPA proposes that any determination that the criteria in CAA section 136(f)(6)(A) are no longer met after the initial determination would be made through a future administrative action. The EPA proposes that access to the exemption would be lost for the full calendar year in which the required criteria were no longer met. The EPA proposes that if access to the regulatory compliance exemption were lost after it was initially made available because one of the two required conditions in CAA section 136(f)(6)(A) were no longer met, it could become available again following a subsequent determination that both conditions were once again achieved. Under such circumstances, the exemption would become available again for the reporting year in which the conditions were met. The EPA proposes that if the conditions ceased to apply and were then met again in the same reporting year, the exemption would be available for the entire reporting year. The EPA requests comment on alternative approaches that would revoke the regulatory compliance exemption for a portion of the year in which the requirements were no longer met and how data under such an approach could be pro-rated for the purposes of determining WEC. The EPA requests comment on the proposed implementation of CAA section 136(f)(6)(B). While the EPA believes the proposed implementation of CAA section 136(f)(6)(B) is consistent with a plain reading of the statutory text and consistent with the proposed timing of the regulatory compliance determinations under CAA section 136(f)(6)(A) (*i.e.,* methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 have been approved and are in effect in *all States*), the agency requests comment on an approach in which access to the exemption would be lost at a state-by-state level. In this alternative approach, if circumstances occurred such that a state plan was no longer approved and in effect, only the WEC applicable facilities located in that state would lose access to the exemption; for WEC applicable facilities that span multiple states, access would be lost if the state plan for any of the states in which the WEC applicable facility is located were no longer approved and in effect.

3. Plugged Well Exemption Under CAA Section 136(f)(7)

Plugged wells have lower methane emissions than active wells and unplugged inactive wells; therefore, plugging wells will reduce total facility emissions potentially subject to WEC. Congress created an incentive for plugging and permanently shutting wells by including an exemption from the WEC in CAA section 136(f)(7): ''[c]harges shall not be imposed with respect to the emissions rate from any well that has been permanently shut-in and plugged in the previous year in accordance with all applicable closure requirements, as determined by the Administrator.''. Separately, in CAA section 136(a)(3)(D) and 136(b), Congress provided funding that can assist owners and operators who elect to voluntarily and permanently shut in and plug wells on non-Federal land.[39]

In this rule, we are proposing that this exemption would be applicable to wells in the onshore and offshore petroleum and natural gas production industry segments. We interpret this exemption to apply to the production industry segments only and not to wells in other segments, such as storage wells. Production wells are distinctly different in purpose and emissions profile than underground storage wells, which are generally replaced with new storage wells then they are plugged and abandoned. We seek comment on including wells in the underground natural gas storage industry segment under this exemption. We are proposing that in the WEC filing, exempted emissions would be those from wells permanently shut-in and plugged in the previous year (*i.e.,* if a well is permanently shut-in and plugged in 2026, the exempted emissions would be deducted from the 2026 emissions totals that are filed under WEC in 2027).

a. Determining if the Exemption for Permanently Shut-In and Plugged Wells Applies to a WEC Applicable Facility

The EPA is proposing two criteria for determining if the exemption for permanently shut-in and plugged wells applies to a WEC applicable facility.

Consistent with the other exemptions, the first criterion is that the facility must have emissions that exceed the waste emissions threshold. CAA 136(c)(7) notes that ''charges shall not be imposed'' on emissions from permanently shut-in and plugged wells. Charges would not be imposed on emissions below the threshold and therefore an exemption is unnecessary in cases where facility emissions are below the threshold. The EPA proposes that emissions from facilities that are below the waste emissions threshold would not be exempted. The EPA proposes that for facilities that exceed the waste emissions threshold, emissions eligible for the plugged well exemption could be subtracted up to the point where facility emissions equal the waste emissions threshold (*i.e.,* the

[39] On August 30, 2023, the EPA, U.S. Department of Energy, and National Energy Technology Laboratory announced the availability of up to $350 million in formula grant funding to eligible states to help monitor and reduce methane emissions from marginal conventional wells, including to help owners and operators voluntarily and permanently reduce methane emissions from marginal conventional wells. Inflation Reduction Act (IRA)—Mitigating Emissions from Marginal Conventional Wells, Funding Opportunity Number DE–FOA–003109, available at: *https://www.grants.gov/web/grants/view-opportunity.html?oppId=350045*.

lowest possible WEC applicable emissions for a facility with the plugged well exemption would be zero).

Second, wells must meet the following definition of permanently shut-in and plugged in accordance with all applicable closure requirements. The EPA proposes that for the purposes of this exemption, a permanently shut-in and plugged well is one that has been permanently sealed to prevent any potential future leakage of oil, gas, or formation water into shallow sources of potable water, onto the surface, or into the atmosphere. For the purposes of this exemption, the EPA is proposing that a well would be considered to be permanently shut-in and plugged, in accordance with all applicable closure requirements, if the owner or operator has met all applicable Federal, state, and local requirements for closure in the jurisdiction where the well is located. For the purposes of this exemption, we are proposing that a well would be considered permanently shut-in and plugged on the date a metal plate or cap has been welded or cemented onto the casing end.

Section II.D.3.c. below details the reporting requirements for this exemption which provide information necessary for verification of the exemption eligibility and exempted emission quantities.

In addition to requirements specifying how to plug a well, relevant Federal, state, and local requirements often also specify requirements such as for notifications, reporting, and site remediation. For purposes of 40 CFR part 99, we propose that the applicable closure requirements would include only the requirements specific to well plugging. We are not proposing to include requirements for notifications, reporting, and site remediation as part of the exemption eligibility criteria for following ''all applicable closure requirements'' because the closure of the well is the key activity impacting methane emissions, which is the focus of the WEC, and these other aspects of closure are less relevant to methane emissions levels. We also note that had we proposed to include these additional requirements in our interpretation of ''all applicable closure requirements,'' the reporting requirements would increase for permanently shut-in and plugged wells and this may lead to recalculations of WEC years after the exemption was initially applied. We request comment on whether ''all applicable closure requirements'' should instead be interpreted to include notifications, reporting, site remediation and other post-closure activities at plugged well.

b. Calculations of Exempted Emissions From Permanently Shut-In and Plugged Wells

The EPA proposes that the methane emissions eligible for the exemption are those that occur at the well level including those from wellhead equipment leaks, liquids unloading, and workovers with and without hydraulic fracturing in the reporting year in which the well was plugged. We are proposing to only consider these emissions sources in the calculation of exempted emissions for the permanently shut-in and plugged well as we expect use of production-related equipment or equipment associated with treating production streams generally (*e.g.,* AGRU, dehydrator, separator) to be at a minimum. We are proposing to limit the emissions quantity to the source types we expect to represent the most significant emissions share expected at permanently shut-in and plugged wells. We note that methane emissions in the reporting year from other equipment onsite (*e.g.,* separator, compressor, flare) may result from multiple wells and not just the wells that are plugged in the reporting year. We request comment on an interpretation that would exempt all methane emissions associated with the production from the permanently shut-in and plugged well—not limited to the wellhead equipment leaks, liquids unloading, and workovers as is included in this proposal—during the calendar year of closure, including the methodology by which methane emissions from non-wellhead specific sources in subpart W could be attributed to the permanently shut-in and plugged well.

For the purposes of quantifying the methane emissions from equipment leaks, liquids unloading, workovers with hydraulic fracturing, and workovers without hydraulic fracturing associated with each permanently shut-in and plugged well, we are proposing to use the methane emissions and throughput data collected or reported to subpart W of part 98. As discussed previously in this preamble, proposed amendments in the 2023 Subpart W Proposal impact the data available to best estimate the exempted emissions from the permanently shut-in and plugged well. Therefore, as described in more detail in this section, for applicable emission sources and industry segments, different approaches are proposed for certain time periods.

The current subpart W rule requires that onshore petroleum and natural gas production facilities report methane emissions from liquids unloading and workovers to be reported by sub-basin for each WEC applicable facility as well as methane emissions from equipment leaks at the facility-level. Subpart W of part 98 also currently requires offshore petroleum and natural gas production facilities and onshore petroleum and natural gas production facilities to report facility-level throughput of gas and oil handled or sent to sale, respectively. Proposed revisions included in the 2023 Subpart W Proposal would require onshore petroleum and natural gas production facilities to report additional elements that facilitate quantification of methane emissions from individual shut-in and plugged wells. Specifically, beginning in reporting year 2024, the 2023 Subpart W Proposal would require onshore petroleum and natural gas production facilities to report well-level throughput volumes for gas and oil sent to sale from wells that are permanently shut-in and plugged. Additionally, beginning in reporting year 2025, the 2023 Subpart W Proposal would increase the granularity of methane emissions reporting for liquids unloading and workovers to the well-level and methane emissions reporting for equipment leaks to the well pad level. Due to the differences in available reporting data for 2024 and future years, the proposed approach for quantifying methane emissions in part 99 for individual wells located at onshore petroleum and natural gas production facilities that are permanently shut-in and plugged in 2024 would be different than the proposed approach for quantifying methane emissions from wells located at onshore petroleum and natural gas production facilities that are permanently shut-in and plugged in 2025 and future years.

For reporting year 2024, the EPA proposes through 40 CFR 99.52 that WEC applicable facilities in the onshore petroleum and natural gas industry segment would quantify methane emissions from permanently shut-in and plugged wells by allocating the subpart W of part 98 reported facility-level equipment leak, liquids unloading, and workover methane emissions using subpart W of part 98 reported production volumes of gas and oil sent to sale. We are proposing that WEC applicable facilities in the onshore petroleum and natural gas industry segment would sum the total subpart W of part 98 reported methane emissions from equipment leaks, liquids unloading, and workovers, and multiply the sum of the methane emissions by the ratio of subpart W of part 98 reported production at the permanently shut-in and plugged well to the subpart

W of part 98 reported facility-level total production.

For facilities with only gas production with exempt plugged well emissions, we are proposing that the reported gas produced from the plugged wells be divided by the total gas production at the facility to develop the ratio. For facilities with only oil production with exempt plugged well emissions, we are proposing that the reported oil produced from the plugged wells be divided by the total oil production at the facility to develop the ratio. For facilities with both gas and oil production with exempt plugged well emissions, we are proposing that gas production that is reported to subpart W of part 98 by the WEC applicable facility in the onshore petroleum and natural gas industry segment would be converted to barrels of oil equivalent using a default value of 6,000 scf/barrel, such that throughput volumes will be on the same basis for facilities that report production of gas and oil. We are seeking comment on whether the EPA should provide an option for WEC applicable facilities to use a facility-specific value for barrels of oil equivalent, including whether facilities routinely determine this value and whether significant variability is expected in this value.

For 2025 and future years, we are proposing that WEC applicable facilities in the onshore petroleum and natural gas industry segment would estimate well-level emissions in accordance with part 98 methods for the permanently shut-in and plugged well. As described previously, for 2025 and future years, subpart W of part 98 would require reporting of methane emissions from liquids unloading and workovers to be at the well-level for facilities in the onshore petroleum and natural gas industry segment, therefore we are proposing that facilities in the onshore petroleum and natural gas industry segment would utilize the methane emissions as -reported to subpart W part 98 in their part 99 exemption calculation for these emissions sources. Also, as described previously, for 2025 and future years, subpart W of part 98 would require reporting of methane emissions from equipment leaks at the well pad for facilities in the onshore petroleum and natural gas industry segment. In order to obtain a well-level estimate for the part 99 exemption calculation, we are proposing to require facilities in the onshore petroleum and natural gas industry segment to utilize the subpart W of part 98 input data and emission estimation methods for wellhead equipment leaks to calculate the methane emissions at the well level for the permanently shut-in and plugged well. For example, if the equipment leak methane emissions at the well pad that includes the permanently shut-in and plugged well were estimated using the leaker method in 40 CFR 98.233(q), the WEC applicable facility would use the count of leakers by component type (*e.g.,* valve, connector) recorded for the permanently shut-in and plugged well, the operating time of the well during the year, and the appropriate emissions factors from subpart W of part 98 to estimate the methane emissions from the permanently shut-in and plugged well. Similarly, if the equipment leak methane emissions at the well pad that includes the permanently shut-in and plugged well were estimated using the population count method in 40 CFR 98.233(q), the WEC applicable facility would use the operating time of the well during the year and the appropriate emissions factors from subpart W of part 98 to estimate the emissions from the permanently shut-in and plugged well.

For offshore petroleum and natural gas production facilities, the current subpart W of part 98 reporting requirements are based on the facility's submission to the Bureau of Ocean Energy Management (BOEM), which includes methane emissions for component-level equipment leaks. The methane emissions required to be reported by offshore facilities would be unchanged by the 2023 Subpart W Proposal as it pertains to this exemption in that these facilities will continue to report the data from their BOEM report. Subpart W of part 98 also currently requires offshore petroleum and natural gas production facilities to report facility-level throughput of gas and oil handled in the reporting year. Proposed revisions included in the 2023 Subpart W Proposal for offshore petroleum and natural gas production facilities would add requirements for the reporting of well-level throughput volumes for gas and oil sent to sale from wells that are permanently shut-in and plugged beginning in reporting year 2024. The 2023 Subpart W Proposal would also revise the terms in the current reporting elements for facility-level throughputs to refer to gas sent to sale, rather than handled, for consistency with the CAA language and with the onshore production industry segment. As noted in the preamble for the 2023 Subpart W Proposal, these verbiage changes for facility-level throughput are not expected to impact the quantity of production volumes reported and were made for consistency and clarity. For the purposes of estimating the exempted emissions for permanently shut-in and plugged wells at offshore petroleum and natural gas production facilities, we are proposing that facilities allocate the component level equipment leaks (*i.e.,* those from valves, connectors) reported to subpart W of part 98 by the ratio of production from the well that has been permanently shut-in and plugged to the total facility-level production. Analogous to the approach for onshore petroleum and natural gas production facilities for reporting year 2024, we are proposing that gas sent to sale be converted to BOE using a default value of 6,000 scf/bbl BOE.

For all reporting years and applicable industry segments, if the WEC applicable facility has more than one permanently shut-in and plugged well, we are proposing that the part 99 emissions calculations would be performed for each well and summed to determine the net annual quantity of methane emissions at the WEC applicable facility eligible for the exemption.

c. Reporting and Recordkeeping Requirements for the Exemption for Permanently Shut-In and Plugged Wells

Through the provisions proposed at 40 CFR 99.51, the EPA is proposing that the WEC obligated party receiving the exemption would provide for each well at a WEC applicable facility, the well ID number as reported to subpart W of part 98; the date the well was permanently shut-in and plugged; the statutory citation for each state, local, and Federal regulation stipulating requirements that were applicable to the closure of the permanently shut-in and plugged well; the emission attributable to the well, and for each WEC applicable facility, the total emissions attributable to all permanently shut-in and plugged wells at the facility; and a certification statement by the designated representative for the WEC obligated party that all identified wells were closed in accordance with state, local, and Federal requirements. We are proposing that the information included in the report would be subject to the general recordkeeping requirements for part 99, meaning these records must be retained for 5 years following the WEC filing year of the exemption such that they can be made available to the EPA for inspection and review.

The EPA requires this information for the verification of exemption eligibility and of exempted emission quantity. Reported information will be used to conduct verification as discussed in section III.A.4., and reported information, records and other information as applicable will be used

to conduct any auditing that occurs under section III.E.1.

The EPA seeks comment on the reporting and recordkeeping requirements for the exemption for emissions from wells that are permanently shut-in and plugged. We seek comment on whether additional information should be collected or retained to allow for verification of the quantity of emissions eligible for the exemption.

III. General Requirements of the Proposed Rule

A. WEC Reporting Requirements

1. Required Reporters

The WEC obligated party would be required to submit a WEC filing annually by March 31 that would include data collected from each WEC applicable facility of which it (the WEC obligated party) is comprised as of December 31 of each reporting year. The WEC filing would provide the data necessary for the EPA to assess and verify the WEC obligation including certain part 98 emissions information and netting, as applicable, as well as supporting documentation for any WEC applicable facility exemptions.

2. Reporting Deadlines

As required under the CAA sections 136(c) and (e), the assessment of the first WEC will be based on data collected under subpart W of the GHGRP beginning on January 1, 2024. We are proposing in 40 CFR 99.5 that the first WEC filing would be due March 31, 2025, and would be required to be submitted annually by March 31 thereafter, as applicable. We have proposed the March 31 reporting deadline under this action for the purpose of quantifying WEC such that the information reported for part 99 can be done in coordination with and on the same schedule as (*i.e.,* by March 31 of the calendar year following the reporting year) the information reported under subpart W.

The EPA is proposing that final revisions to the first WEC filing, with the exception of resubmissions to provide CAA section 111(b) or (d) compliance reports or revisions to previously reportd compliance reports for the purposes of the regulaltory compliance exemption, would be due by November 1, 2025, and would be required to be submitted annually by November 1 thereafter, as applicable (see section III.A.4. of this preamble for discussion and request for comment on this deadline).

3. Submission of the WEC Filing

The EPA proposes that each WEC filing must be submitted electronically in accordance with the requirements of 40 CFR 99.6 and in a format specified by the Administrator.

As noted previously in this section of the preamble, the EPA proposes that each WEC obligated party will submit a WEC filing annually. The WEC filing content we are proposing is expected to provide the data necessary to complete the WEC calculations as described previously in the preamble. We are proposing WEC filing reporting requirements to cover general company information including physical address, email, telephone number, list of associated WEC applicable facilities and their identifying information (*e.g.,* part 98, subpart W e-GGRT ID), as well as the net WEC emissions calculated in accordance with 40 CFR 99.22 and the WEC obligation as calculated pursuant to 40 CFR 99.23. We are also proposing that each WEC obligated party's WEC filing include certain information at the WEC applicable facility level. Specifically, we are proposing that for each WEC applicable facility that comprises the WEC obligated party, the reporting requirements would cover facility-level information including the facility's eGGRT ID, the facility's industry segment(s), the facility's waste emissions threshold calculated in accordance with 40 CFR 99.20, and the facility's WEC applicable emissions calculated in accordance with 40 CFR 99.21.

The EPA seeks comment on these reporting and recordkeeping requirements (*e.g.,* date of WEC filing and payment for the first year). We seek comment on whether additional information should be reported to EPA or retained by the WEC obligated party or WEC applicable facility to allow for verification of the WEC filing.

The EPA is also proposing reporting requirements for each WEC obligated party related to the three WEC exemptions, which are discussed in sections II.D.1. through 3. of this preamble. Under the proposed approach, the exemptions are only available to WEC applicable facilities that exceed the waste emissions threshold. The EPA therefore proposes that these reporting requirements would only apply to WEC applicable facilities that exceed the waste emissions threshold and are otherwise eligible for the exemption(s). The EPA seeks comment on the reporting requirements for each exemption, as noted in sections II.D.1. through 3. of this preamble.

4. Verification and WEC Filing Revisions

We anticipate that the foundation of the WEC obligated party's WEC filing would be the methane emissions and throughput reported by the WEC applicable facilities in their subpart W reports. As specified in § 98.3(f) and (h) of this chapter, part 98 currently includes a verification process and resubmission process for resolving substantive error(s)[40] in reporting. These errors are either found through self-discovery by the WEC obligated party or are found by the EPA during the verification process. In part 98, errors must be resolved within 45-days from discovery or notification of the error by the EPA. The EPA may grant a 30-day extension request if the request is timely, such that a total of 75 days may be provided for complete issue resolution. Additional extensions may be approved by the Administrator in specified limited circumstances. Resolution is either made by report revision and resubmission or by providing an adequate demonstration that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error. Upon satisfying these requirements, the EPA designates the part 98 report as verified. If the requirements in § 98.3 of this chapter are not satisfied, the EPA considers the part 98 report unverified.

We are proposing that the verification status of the WEC applicable facility with respect to the reporting in subpart W part 98 would be considered by the EPA when determining the verification status of the part 99 filing because the subpart W data would be the cornerstone of the WEC. In effect, a WEC filing may not achieve verified status until all errors associated subpart W reports that impact total WEC are corrected. For example, if the subpart W part 98 report of one WEC applicable facility contains errors related to reported emissions or throughput that affect total WEC, the EPA could by extension consider the WEC filing of the WEC obligated party that includes that WEC applicable facility to be unverified. However, there may also be situations in which an unverified subpart W part 98 report does not impact the ability to accurately calculate a WEC obligated party's WEC obligation. In these circumstances, the proposed approach would allow the EPA to verify a WEC obligated party's part 99 report even if

[40] 40 CFR 98.3(h)(3): A substantive error is an error that impacts the quantity of GHG emissions reported or otherwise prevents the reported data from being validated or verified.

the part 98 report of a WEC applicable facility associated with the WEC obligated party remained unverified.

Separately, there are elements of the part 99 filing that would not be tied to the subpart W report, such as the calculation of the WEC including netting and any exemption information. We are proposing to implement a similar verification procedure under part 99 to that which exists under part 98. In implementing the verification of information submitted under part 99, the EPA envisions a two-step process. First, we propose to conduct an initial centralized review of the data that would help assure the completeness and accuracy of data. Second, the EPA intends to notify WEC obligated parties of potential errors, discrepancies, or make inquiries as needed concerning the WEC filing. Specifically for this rulemaking, we anticipate that there could be errors or clarifications with respect to the supporting documentation and quantification of emissions associated with exemptions from the WEC, which may require EPA review to evaluate and confirm their validity and accuracy. The part 99 verification review would identify issues resulting from the calculation of WEC based on verified subpart W GHGRP reports and verified WEC filings to the extent possible. A thorough discussion of the separate process for unverified reports and approach for reassessment of WEC obligation due to resubmissions is discussed in section III.B. of this preamble.

We are proposing provisions that would require a WEC obligated party to resubmit their WEC filing within 45-days of either being contacted in writing by the EPA notifying them of the presence of a substantive error in their WEC filing or by self-discovering that a previously submitted WEC filing contains one or more substantive errors (except as described later in this section), or within 75 days if granted a 30-day extension per 40 CFR 99.7(e)(4). For the purposes of part 99, we are proposing to consider a substantive error to be an error that impacts the Administrator's ability to accurately calculate the WEC obligated party's obligation, which may include, but would not be not limited to, the list of WEC applicable facilities associated with a WEC obligated party and corresponding data reported in each listed WEC applicable facility part 98 report(s), emissions associated with exemptions, and supporting information for each exemption to demonstrate its validity. We are proposing that the revised WEC filing must correct all substantive errors or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error.

We are also proposing that if a WEC applicable facility revises and resubmits their part 98 report, which results in impacts on the WEC calculations, the WEC obligated party would also be required to submit a revised WEC filing that includes the number of corrections and information detailing the correction(s) made. In the event that a subpart W report revision results in a change in the applicability of part 99 to the facility, under the proposed provisions the WEC obligated party would either submit a WEC filing adding or removing any facilities, as appropriate. As described in the paragraph below, with the exception of resubmissions to provide CAA section 111(b) or (d) compliance reports or revisions to previously reported compliance reports for the purposes of the regulatory compliance exemption, the EPA is proposing that part 99 resubmissions would only be allowed up to November 1 of the year following the reporting year. Any part 98 resubmissions after this date that impact WEC calculations would not be required to be resubmitted in a revised WEC filing; facilities could continue to resubmit data under subpart W at any time. Resubmissions related to CAA section 111(b) or (d) compliance reports for the purposes of the regulatory compliance exemption must be made as discussed in section II.D.2.g. of this preamble. Under subpart W, facilities may resubmit data for historic reporting years via e-GGRT for the most recent five reporting years (*e.g.,* submit updates to 2019 data in 2022). Data resubmission for historic reporting years in the context of the WEC program is extremely complicated due to the potential changes in facility ownership over time and the implications this has on netting of emissions from facilities under common ownership or control. For example, a company or a facility owned by a company in one year may be owned in whole or in part by one or multiple different companies the next year. With such changes occurring annually to multiple facilities across multiple owners and operators with more than one facility under common ownership or control, there is no practical means of incorporating resubmitted data for historic reporting years in the WEC program. This would require the EPA to engage in a potentially constant series of WEC recalculations and associated invoicing or refunds. The EPA therefore proposes a deadline of November 1 for each year, after which time no WEC filings could be resubmitted. For example, resubmissions of data initially reported by March 31, 2025, used to assess WEC for the 2024 reporting year, would be required to be submitted by November 1, 2025. This proposed approach would not allow resubmissions for historic reporting years for WEC filings, even if their corresponding subpart W data was resubmitted for historic reporting years for purposes of subpart W. Subpart W facilities would continue to be subject to part 98 existing requirements for resubmitting data for previous reporting years, but any data resubmitted under part 98 after November 1 of the calendar year following the respective reporting year would not be considered for the purposes of WEC under part 99. This deadline would apply to all WEC applicable facilities, including those with data verified by EPA. The EPA's proposed approaches for WEC filing requirements and data verification are intended to incentivize complete and accurate WEC filings under part 99, and thus corresponding reporting of complete and accurate data under part 98, by March 31 of each year. As a result, the EPA expects that there will be little need to resubmit data after this initial reporting deadline, and the seven months between March 31 and the proposed final deadline of November 1 would give facility owners or operators sufficient time to make any resubmissions. The EPA proposes that it would retain the right to reevaluate WEC obligations in WEC filings after November 1 (*e.g.,* as part of an EPA audit of facility data). Similarly, the November 1 deadline would not apply to adjustments to WEC obligations resulting from the process to resolve unverified data, proposed at 40 CFR 99.8, should that resolution occur after November 1.

The EPA requests comment on the proposed approach of setting a deadline for WEC resubmissions under part 99 and in doing so not allowing data resubmissions for the WEC filing for previous historic reporting years. The EPA requests comment on the November 1 deadline and options for alternative deadlines. The EPA also requests comment on alternative approaches that would allow data resubmissions for historic reporting years under the WEC program, as well as comment on how such changes would be incorporated into netting for historic reporting years.

B. Remittance and Assessment of WEC

We are proposing that each WEC obligation payment must be submitted electronically in accordance with the proposed requirements of 40 CFR 99.6 and in a format specified by the Administrator as part of the submission of the WEC filing (*i.e.,* by March 31 each year covering the preceding reporting year).

For the purposes of ensuring timely payment of the WEC, the EPA is proposing financial sanctions under 40 CFR 99.10 of subpart A, pursuant to the authority included in the Federal claims provision at 31 U.S.C. 3717. These penalties would apply to delinquent WEC payments. Under 31 U.S.C. 3717, there are interest, penalties, and costs that may be imposed on outstanding or delinquent debts arising under a claim owed by a person to the U.S. Government. Specifically, under 31 U.S.C. 3717(a)(1), agencies shall charge a minimum annual rate of intereston an outstanding debt on a United States Government claim owned by a person.[41] Under the EPA's implementing Policy Number 2540–9–P2, accounts are considered delinquent when the EPA does not receive payment by the due date specified on a bill or invoice (*i.e.,* for the WEC obligation at the time of submission of the WEC filing). The EPA is proposing to cite this Federal claims interest charge authority as the first tier of WEC payment sanctions.

Second, under 31 U.S.C. 3717(e)(1), agencies must collect an additional penalty charge of not more than six percent per year for failure to pay any part of a debt more than 90 days past due, as well as additional charge to cover the cost of processing delinquent claims. Under Policy Number 2540–9–P2, the EPA Finance Centers are responsible for issuing demand notices and conducting collection efforts for the Agency. The EPA Finance Centers would assess interest, handling, and penalty charges in 30-day increments for late payments and would assess the 6 percent penalty with the 3rd demand letter or notice.

The EPA therefore proposes to include this additional 6 percent non-payment penalty charge for WEC debts that are more than 90 days past due. This would be the second tier of sanction authority under this proposal's set of payment sanctions and would be implemented if the first tier of interest charges is not effective in causing a delinquent WEC obligated party to make their payments current. The EPA seeks comment on its proposed approach for applying interest to late WEC fee payments.

Additionally, for WEC obligated parties that fail to submit their annual WEC filing by the deadline discussed in section III.A.2. of this preamble, the EPA is proposing a daily penalty no greater than the rate associated with 42 U.S.C. 7413(d)(1) specified in Table 1 of 40 CFR 19.4, as amended. The EPA Finance Centers would assess interest, handling, and penalty charges in 30-day increments. We are proposing that the assessment of this penalty would begin on the date that the WEC filing was considered past due (*i.e.,* April 1st) and continue until such time that the WEC filing is submitted and certified by the WEC obligated party. The EPA requests comment on its proposed approach of establishing a daily penalty for unsubmitted WEC filings.

1. Process for Reassessing WEC for WEC Filings Resubmitted After the Initial Waste Emission Charge Has Been Assessed

As discussed in section III.A.4. of this preamble, WEC obligated parties may need to resubmit their WEC filings and WEC applicable facilities may need to resubmit their GHGRP reports. These resubmittals have the potential to result in recalculation of the WEC obligation for the WEC obligated party. As discussed in section III.A.4. of this preamble, the EPA proposes that data resubmissions for the previous reporting year would be required to be submitted by November 1 in order to be considered for WEC recalculations, with the exeption of resubmissions related to CAA section 111(b) or (d) compliance reports for the purposes of the regulatory compliance exemption. If the recalculated WEC obligation is less than the original WEC obligation owed by the WEC obligated party, we propose that the EPA would authorize a refund to the WEC obligated party equal to the difference in WEC obligation. If the recalculated WEC obligation is greater than the original WEC obligation owed by the WEC obligated party, the EPA would charge the WEC obligated party for the remaining balance of the WEC, including any assessed fees or penalties.[42] To encourage careful attention to detail and reduce the need for WEC filing revisions, we are proposing to charge a daily interest rate for any revised WEC filing that results in additional WEC being owed. As proposed in 40 CFR 99.8, this daily interest rate would be assessed from April 1st (*i.e.,* the day after the submission deadline) until such time that a resubmitted WEC filing and payment, that is subsequently verified by the EPA, is certified by the designated representative. We propose a daily interest rate equal to the Current Value of Funds Rate, consistent with 31 U.S.C. 3717(a). The EPA proposes that payment for any additional WEC, including assessed interest, would made with the resubmitted WEC filing.

The EPA seeks comment on the proposed approach for resubmitted WEC filings, including the application of daily interest rate for revised WEC filings that result in additional WEC being owed.

2. Process for Assessing WEC for Unverified Part 99 Filings

As discussed in section III.A.4. of this preamble, the EPA's verification review process ideally ends with the resolution of identified potential errors through either correction and resubmission of facilities' reports or justification provided through correspondence with reporters that no substantive error exists. When WEC applicable facilities or WEC obligated parties do not provide appropriate information to resolve the errors in their part 98 or part 99 data after 45 days (with the possibility of a 30-day extension) of either being contacted in writing by the EPA notifying them of the presence of a substantive error or by self-discovering that a previously submitted part 98 report or WEC filing contains one or more substantive errors, the EPA considers their WEC filing to be unverified.

If a WEC filing is unverified but the EPA is able to correct the error(s) based on reported data, we propose that the EPA will recalculate the WEC using available information and provide an invoice or refund to the WEC Obligated Party within 60 days of determining a WEC filing to be unverified. If the WEC Obligated Party resubmits a WEC filing within that timeframe, the EPA would either accept the resubmission, or take the resubmission into account when calculating the WEC. In cases where the EPA is unable to calculate the WEC with available information, the WEC Obligated Party may be required to

[41] This rate of interest is known as the Current Value of Funds Rate, or CVFR, and is published prior to November 30th of each year by Treasury. The CVFR is based on the weekly average of the Effective Federal Funds Rate, less 25 basis points, for the 12-month period ending September 30th of each year, rounded to the nearest whole percent. This rate may be revised on a quarterly basis if the annual average, on a moving basis, changes by 2 percentage points or more.

[42] We propose that WEC obligated parties would be subject to the financial sanctions proposed in 40 CFR 99.10 for any delinquent payments of the revised WEC invoice(s), as discussed in section III.B. of this preamble.

undergo a third-party audit. The third-party auditor must review records kept by the WEC Obligated Party, quantify the WEC with available information and in accordance with the requirements of this part, and submit the updated WEC calculations and supporting data to the EPA. The EPA would then take that information into consideration and calculate the WEC and provide an invoice to the WEC Obligated Party. Third-party audits may be required to be arranged by and conducted at the expense of the WEC obligated party.

A WEC obligated party would be required to pay an invoice received from the EPA for any updated WEC obligation by the specified due date, or within 30 days of the date of the invoice or bill if a due date is not provided.

The EPA requests comment on the proposed approach for assessing WEC for unverified part 99 reports, including the EPA recalculating WEC when data are available, and the option of requiring third-party auditing of WEC obligated party records when the EPA is not able to recalculate WEC with the available information. The EPA requests comment on an alternative approach that would establish default values (*e.g.,* industry segment-specific methane intensities) that would be conservative in nature and used to calculate WEC applicable emissions from unverified reports until such time that the report becomes verified. The calculated methane emissions from the unverified report(s) would then be included when determining the WEC obligated party's WEC obligation. In this approach, the EPA envisions that similar financial sanctions as those discussed in section III.B.2. of this preamble would be applied until a verified report is submitted and certified by the WEC applicable facility. We also seek comment on additional gap-filling approaches for unverified GHGRP reports. In addition, the EPA seeks comment on an approach for unverified reports that would apply daily penalties on unverified reports, up to the rate associated with U.S. Code citation 42 U.S.C. 7413(d)(1) specified in Table 1 of 40 CFR 19.4, as amended. Under such an approach, the EPA seeks comment on the duration of the penalty (*e.g.,* 3 years or until the report is verified, whichever is sooner).

C. Authorizing the Designated Representative

We are proposing provisions for each affected WEC obligated party to identify a designated representative. We are proposing that each WEC obligated party would each have one designated representative who is an individual selected by an agreement binding on the WEC obligated party. This designated representative would act as a legal representative between the WEC obligated party and the Agency. We are proposing that the designated representative must submit a complete certificate of representation at least 60 days prior to the submission of the first WEC filing made by the WEC obligated party. Additionally, each WEC filing would contain a signed certification by a designated representative of the WEC obligated party. On behalf of the owner or operator, the designated representative would certify under penalty of law that the WEC filing has been prepared in accordance with the requirements of 40 CFR part 99 and that the information contained in the WEC filing is true and accurate, based on a reasonable inquiry of individuals responsible for obtaining the information.

We are also proposing that the designated representative could appoint an alternate to act on their behalf, but the designated representative would maintain legal responsibility for the submission of complete, true, and accurate emissions data and supplemental data. A designated representative or alternate designated representative may delegate one or more ''agents.'' The agent (*e.g.,* a part 98 subpart W designated representative who can provide facility-specific information) can enter data for a part 99 WEC filing, but is not allowed to submit, certify, or sign a WEC filing.

We are proposing that within 90 days after any change in the WEC obligated party, the designated representative or any alternate designated representative must submit a certificate of representation that is complete under this section to reflect the change.

D. General Recordkeeping Requirements

We are proposing that WEC applicable facilities and WEC obligated parties must retain all required records for at least 5 years from the date of submission of the WEC report for the reporting year in which the record was generated. We are proposing that the records shall be kept in an electronic or hard-copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and auditing. Under the proposed provisions, upon request by the Administrator, the records required under this section must be made available to the EPA. We are proposing that records may be retained off site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, we are proposing that the equipment or software necessary to read the records shall be made available, or, if requested by the EPA, electronic records shall be converted to paper documents. The records that the EPA is proposing that must be retained would include information required to be retained under part 98, specifically subparts A and W, any other information needed to complete the WEC filing, and all information required to be submitted as part of the WEC filing, including any supporting documentation.

E. General Provisions, Including Auditing and Compliance and Enforcement

1. Auditing Provisions

We are proposing that the EPA may conduct on-site audits of facilities, as indicated in 40 CFR 99.7(c). Under the proposed general recordkeeping provision at 40 CFR 99.7(d), the records generated under this part would be available to the EPA during an on-site audit as the records must be recorded in a form that is suitable for expeditious inspection and review, and must be made available to the EPA upon request. The on-site audits may be conducted by private auditors contracted by the EPA or by Federal, State or local personnel, as appropriate, and may be required to be arranged by and conducted at the expense of the WEC obligated party.

2. Compliance and Enforcement

We are proposing that any violation of any requirement of this part shall be a violation of the Clean Air Act, including section 114 (42 U.S.C. 7414) and section 136 (*42 U.S.C. 7436*). A violation would include but is not limited to failure to submit, or resubmit as required, a WEC filing, failure to collect data needed to calculate the WEC charge (including any data relevant to determining the applicability of any exemptions), failure to retain records needed to verify the amount of WEC charge, providing false information in a WEC filing, and failure to remit WEC payment. As proposed at 40 CFR 99.4(b), it is a violation to fail to authorize a designated representative for a WEC obligated party. In the case of a facility with more than one owner or operator, failure to select a WEC obligated part would constitute a violation on the part of each owner or operator, as proposed at 40 CFR 99.4. Each day of a violation would constitute a separate violation.

IV. Proposed Confidentiality Determinations for Certain Data Reporting Elements

A. Overview and Background

In this action, the EPA is proposing to require WEC obligated parties to report the general information described in section III.A.3. of this preamble and the information specific to any applicable exemptions as described in sections II.D.1. through 3. of this preamble. This information is necessary for the EPA to verify the contents of the WEC filing, including confirming that all of the required WEC applicable facilities were included, each WEC applicable facility is eligible for any exemptions that were applied, and the WEC applicable emissions and the amount of the WEC obligation were calculated correctly. As explained in the remainder of this section, the EPA is proposing that nearly all of the data reported would be either emission data or otherwise ineligible for confidential treatment. The information that may be eligible for confidential treatment would be information included in supporting documentation required for eligible exemptions or additional information provided in software comments fields.

Section 114(c) of the CAA requires that ''[a]ny records, reports, or information obtained under [CAA section 114(a)] shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) . . . if made public, would divulge methods or processes entitled to protection as trade secrets . . . , the Administrator shall consider such record, report, or information or particular portion thereof confidential. . . .'' Thus, the CAA begins with a presumption that information submitted to the EPA may be disclosed to the public. It then provides a narrow exception to that presumption for information that ''if made public, would divulge methods or processes entitled to protection as trade secrets. . . .'' Section 114(c) of the CAA narrows this exception further by excluding ''emission data'' from the category of information eligible for confidential treatment. The EPA has interpreted CAA section 114(c) to afford confidential treatment to both trade secrets and confidential business information that are not emission data (40 FR 21987, 21990 (May 20, 1975)).

While the CAA does not define ''emission data,'' the EPA has done so by regulation at 40 CFR 2.301(a)(2)(i). Emission data means, with reference to any source of emissions of any substance into the air—

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

Further, in a 1991 EPA notice of policy (56 FR 7042, February 21, 1991), the EPA stated that certain data fields constitute ''emission data'' and therefore cannot be withheld as confidential. The 1991 document indicated that while confidentiality determinations are typically made on a case-by-case basis, some kinds of data will always constitute emission data within the meaning of CAA section 114(c). The document listed several data fields that EPA considered to be emission data including facility identification data (*e.g.,* facility name; address; ownership; Standard Industrial Classification (SIC); emission point, device or operation description information) and emission parameters (*e.g.,* compounds emitted; origin of emissions; emission rate, concentration, release parameters, boiler or process design capacity, emission estimation method). The document clarified that the list of types of information in the document was not exhaustive and that other data might also constitute emission data.

For data that are not ''emission data,'' the confidentiality determination criteria at 40 CFR 2.208(a) through (d) are as follows:

Determinations issued under §§ 2.204 through 2.207 shall hold that business information is entitled to confidential treatment for the benefit of a particular business if:

(a) The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn;

(b) The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

(c) The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding); and

(d) No statute specifically requires disclosure of the information.

In *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356 (2019) (hereafter referred to as *Argus Leader*), the U.S. Supreme Court issued an opinion addressing the meaning of the word ''confidential'' in Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4)(2012 and Supp. V. 2017) stating that ''confidential'' must be given its ''ordinary'' meaning, which is information that is ''private'' or ''secret.'' As a result, starting with the date of the *Argus Leader* ruling, the EPA no longer assesses data elements using the rationale of whether disclosure will cause a likelihood of substantial competitive harm when making confidentiality determinations. Instead, the EPA assesses whether the information is customarily and actually treated as private by the reporter and whether the EPA has given an assurance at the time the information was submitted that the information will be kept confidential or not confidential.

B. Proposed Confidentiality Determinations

Pursuant to CAA section 114(c), the EPA is proposing to make categorical emission data and confidentiality determinations in advance through this notice and comment rulemaking for the categories of information in these proposed reports under part 99. We describe the proposed emission data categories and confidentiality determinations for the reported information, as well as the basis for such proposed determinations, in this section. This approach is similar to the approach we have taken for the GHGRP under 40 CFR part 98 (see 75 FR 39094, July 7, 2010, and 75 FR 30782, May 26, 2011, for more information).

The determinations the EPA is proposing in this rulemaking, if finalized, would serve as notification of the Agency's decisions concerning: (1) the categories of information the Agency will not treat as confidential because it is emission data; (2) the information that

is not emission data but is not entitled to confidential treatment; and (3) the information that the submitter may claim as confidential but will remain subject to the existing 40 CFR part 2 process. In responding to requests for information not determined in this proposal to be emission data or otherwise not entitled to confidential treatment, we propose to apply the default case-by-case process found in 40 CFR part 2.

The emission data and confidentiality determinations proposed in this rulemaking are intended to provide consistency in the treatment of the information collected by the EPA as part of the proposed WEC filings. The EPA anticipates that making these determinations in advance through this rulemaking will provide predictability and transparency for both information requesters and submitters.

The categories of information that we are proposing to determine to be emission data in this action are:

(1) Methane emissions;

(2) Calculation methodology; and

(3) Facility and unit identifier information.

The EPA is proposing to group types of information (data elements) that the Agency is proposing to require WEC obligated parties to submit under part 99 that would be considered emission data into these three categories based on their shared characteristics. For the sake of organization, for any information that logically could be grouped into more than one category, we have chosen to label information as being in just one category where we think it fits best. This approach will reduce redundancy within the categories that could lead to confusion and ensure consistency in the treatment of similar information in the future. We are requesting comment on the following: (1) our proposed categories of emission data; and (2) our placement of each data element under the category proposed.

For reporting elements that the EPA does not designate as ''emission data,'' the EPA is proposing to assess each individual reporting element according to the *Argus Leader* criteria (*i.e.,* whether the information is customarily and actually treated as private by the submitter) and 40 CFR 2.208(a) through (d). Therefore, we are not proposing to establish categories and categorical confidentiality determinations for information that is not ''emission data.'' However, we are proposing descriptions of the type of information that would not be eligible for confidential treatment in 40 CFR 99.13(b), including certain information demonstrating compliance with standards and information that is publicly available. We are also proposing in 40 CFR 99.13(c) through (e) to specify certain data elements and types of information that would be subject to the process for confidentiality determinations in 40 CFR part 2. The proposed provisions in 40 CFR 99.13(b) would establish the proposed confidentiality determinations of the proposed data elements in part 99 and would also provide clarity and ensure consistent treatment of new or substantively revised data elements if the content of the WEC filing is amended in a future rulemaking. Sections IV.B.2. and 3. of this preamble describe these proposed provisions, and our assessment of each individual reporting element that we are proposing is not ''emission data.'' We are requesting comment on the proposed Agency determinations that information described in those sections of the preamble are not entitled to confidential treatment.

1. Emission Data

We are proposing to establish in 40 CFR 99.13(a) that certain categories of information the EPA would collect in the proposed WEC filings are information that meets the regulatory definition of emission data under 40 CFR 2.301(a)(2)(i). The following sections describe the categories of information we are proposing to determine to be emission data, based on application of the definition at 40 CFR 2.301(a)(2)(i) to the shared characteristics of the information in each category and our rationale for each proposed determination.

a. Information Necessary To Determine the Identity, Amount, Frequency, Concentration, or Other Characteristics of Emissions Emitted by the Source

Under 40 CFR 2.301(a)(2)(i)(A), emission data includes ''[i]nformation necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing[.]'' We are proposing that the following categories of information are emission data under 40 CFR 2.301(a)(2)(i)(A):

(1) Methane emissions; and

(2) Calculation methodology.

Methane emissions. Data elements included in the Methane emissions data category are the net WEC emissions, facility waste emissions thresholds, industry segment waste emissions thresholds for each applicable industry segment within the facility (if more than one industry segment applies), and WEC applicable emissions, as well as the quantities of methane emissions that the WEC obligated party calculates should be exempted due to unreasonable delay and wells that were permanently shut-in and abandoned. The EPA proposes to determine that the emissions at each reporting level constitute ''emission data.'' These data elements are information regarding the identity, amount, and frequency of any emission emitted by the WEC applicable facility, and, therefore, they are ''emission data.'' As discussed in section IV.A. of this preamble, in the 1991 EPA notice of policy (56 FR 7042, February 21, 1991), the EPA identified, without attempting to be comprehensive, data elements that the EPA considered to constitute emission data. The 1991 document lists the ''Emission type (*e.g.,* the nature of emissions, such as CO_2, particulate or a specific toxic compound, and origin of emissions such as process vents, storage tanks or equipment leaks)'' and ''Emission rate (*e.g.,* the amount released to the atmosphere over time such as kg/yr or lbs/yr)'' as data that are not entitled to confidential treatment and are, therefore, releasable to the public. Our proposed determination for this data category is consistent with the 1991 document. It is also consistent with the determination for a similar category in the GHGRP under 40 CFR part 98.

Calculation methodology. The data element included in this category is the method used to determine the quantity of methane emissions that the WEC obligated party calculates should be exempt due to an unreasonable permitting delay and the method used to determine the equipment leaks emissions attributable to a plugged well. Most of the necessary calculations in part 99 do not include multiple equations or approaches that could be selected by a WEC obligated party, and in those cases, the calculation methodology used is readily apparent for any WEC obligated party. Calculations for the exemptions for unreasonable delay and plugged wells do include multiple equations that facilities may use under different circumstances.

The EPA proposes to determine that the data elements in the Calculation methodology category are ''emission data'' under 2.301(a)(2) because they are ''information necessary to determine . . . the amount'' of emissions emitted by the source. The method used to calculate emissions is emission data under 40 CFR 2.301(a)(2) because it is information necessary for the WEC obligated party to calculate the

emissions and for the EPA and the public to verify that an appropriate method was used. As discussed in section IV.A. of this preamble, the 1991 EPA notice of policy provided a list of information that the EPA considered to constitute ''emission data'' under 40 CFR 2.301(a)(1)(2)(i). That list includes the ''emission estimation method (*e.g.,* the method by which an emission estimate has been calculated such as material balance, source test, use of AP–42 emission factors, etc.),'' which is the same type of data element as those that the EPA is proposing to include in this data category. Our proposed determination for this data category is consistent with the 1991 document. It is also consistent with the determination for a similar category in the GHGRP under 40 CFR part 98.

b. Information That Is Emission Data Because It Provides a General Description of the Location and/or Nature of the Source to the Extent Necessary To Identify the Source and To Distinguish It From Other Sources

Under 40 CFR 2.301(a)(2)(i)(C), emission data includes ''a ''[g]eneral description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).'' We are proposing that the data elements in the Facility and unit identifier information category of information are emission data under 40 CFR 2.301(a)(2)(i)(C).

The proposed part 99 regulations would require WEC obligated parties to report in the WEC filing information needed to identify each facility as well as specific emission units (affected facilities) and/or well-pads associated with an exemption. Facility-identifying information must be reported for all facilities as specified in 40 CFR part 99, subpart A. Affected facility-specific identifying information is required for the regulatory compliance exemption. Well-pad-specific identifying information is reported if required by an applicable exemption for onshore petroleum and natural gas production facilities.

Data elements in this category would include the following data elements required under 40 CFR part 99, subpart A to be included in each annual WEC filing: WEC obligated party company name and address, the name and contact information for the designated representative of WEC obligated party, and a signed and dated certification statement of the accuracy and completeness of the report, which is provided by the designated representative of the owner or operator. The proposed part 99 regulations would also require that the filing include specific information about each facility covered by the annual WEC filing, including the e-GGRT ID number and the industry segment. For each exemption, the facility and unit identifier information category would include (as applicable) the facility identifier, the well-pad and/or well identifier reported under subpart W (if applicable), other facility or affected facility identifiers used to identify the facility/sources in other EPA systems (specifically, the ICIS–AIR ID or Facility Registry Service (FRS) ID and the EPA Registry ID from the Compliance and Emissions Data Reporting Interface (CEDRI)), emission source-specific methane mitigation activities impacted by an unreasonable permitting delay, and exemption-specific certification statements.

As discussed in section IV.A. of this preamble, emission data must be available to the public and is not entitled to confidential treatment under CAA section 114(c). ''Emission data'' is defined in 40 CFR 2.301(a)(2)(i)(C) to include ''[a] general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources . . . .'' Consistent with this definition of emission data, the EPA considers facility and emission unit identifiers to be source information or ''information necessary to determine the identity . . . of any emission which has been emitted by the source,'' and therefore emission data under 40 CFR 2.301(a)(2)(i). Further, 40 CFR 2.301(a)(2)(i)(A) specifies that emission data includes, among other things, ''information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source. . . .'' The EPA considers the term ''identity . . . of any emission'' as not simply referring only to the names of the pollutants being emitted, but to also include other identifying information, such as from what and where (*e.g.,* the identity of the emission unit) the pollutants are being emitted.

The 1991 EPA notice of policy (discussed in section IV.A. of this preamble) provided a list of data fields that the EPA considered to be emission data. For example, in the 1991 document, the EPA considered that plant name, address, city, State, zip code, emission point or device description, SIC code, and Source Classification Code (SCC) are emission data. Therefore, the public has been on notice that the EPA considers many of the data elements in this data category to be emission data and thus not entitled to confidential treatment. The 1991 document also makes clear that the list of data is not comprehensive and that other data might also constitute emission data. This proposed part 99 determination that these data elements are emission data is consistent with the 1991 policy statement, and also consistent with the Facility and unit identifier information category in the GHGRP under 40 CFR part 98.

2. Reported Information That Is Never Entitled to Confidential Treatment

As noted in section IV.B. of this preamble, we are proposing to assess the confidentiality of each individual part 99 reporting element that is not otherwise designated as emission data in this rulemaking according to the *Argus Leader* criteria (*i.e.,* whether the information is customarily and actually treated as private by the submitter) and 40 CFR 2.208(a) through (d). However, in this action we are proposing descriptions of the type of information that would not be eligible for confidential treatment in 40 CFR 99.13(b), in part to establish the proposed confidentiality determinations of the proposed data elements in part 99 but also to provide clarity and consistency in the event that the content of the WEC filings are amended in a future rulemaking. The WEC obligation is calculated by multiplying the net WEC emissions by a set dollar amount, depending on the reporting year. As explained in section IV.B.1.a. of this preamble, the EPA is proposing to determine that the net WEC emissions are emission data. Therefore, we are proposing that the WEC obligation, which is calculated as the net WEC emissions multiplied by a dollar per ton rate that is prescribed in CAA section 136, would not be eligible for confidential treatment.

We are also proposing that certain information considered to be compliance information in part 99, regardless of whether it is or is not designated as emission data, is still not otherwise eligible for confidential treatment. Compliance information collected under part 99 includes information necessary to demonstrate compliance with the eligibility requirements for the exemptions for unreasonable permitting delay, regulatory compliance, and wells that have been permanently shut-in and plugged. Examples of the information collected include: for the unreasonable

delay exemption, the date of the permit request, the estimated date to commence operation if the application had been approved within a set period of months, the first date that offtake to the gathering or transmission infrastructure from the implementation of methane emissions mitigation occurred once the application was approved, the beginning and ending date for which the eligible delay limited the offtake of natural gas associated with methane emissions mitigation activities, information on all applicable local, state, and Federal regulations regarding flaring emissions and the facility's compliance status for each, and other compliance information related to gathering or transmission infrastructure; for the regulatory compliance exemption, copies of reports and other evidence of compliance with NSPS OOOOb or a state, Tribal, or Federal plan under 40 CFR part 62; and for the plugged well exemption, the date a well was permanently shut-in and plugged and the statutory citation for the requirements that were followed for that process. Operating and construction permits are available to the public through the State issuing the permits (as the delegated authority of the EPA), generally either through an online information system or website, or upon request to the state agency issuing the permits. These permits are expected to contain information about the type and size of process equipment operated at a facility, control devices or other measures undertaken to reduce emissions from each process, and the emission standards to which the facility is subject (including Federal standards as well as state or local standards). Reports submitted by owners and operators of facilities subject to NSPS OOOOb or a state, Tribal, or Federal plan under 40 CFR part 62 are available through the EPA's online repository ''WebFIRE.'' See *https://www.epa.gov/electronic-reporting-air-emissions/webfire.* Finally, well-specific information, including age, production rate, and operating status, is publicly available through state oil and gas commissions and/or state databases as well as sources such as Enverus. Because this information is already publicly available, it would not be eligible for confidential treatment.

The EPA is also proposing in 40 CFR 99.13(b)(3) that any other information that has been published and made publicly available, including the publicly available reports submitted under the GHGRP and information on websites, would not be eligible for confidential treatment. Information that is publicly available does not meet the criteria for information entitled to confidential treatment specified in 40 CFR 2.208(c). This proposed paragraph 40 CFR 99.13(b)(3) would specify an additional type of information that would not be eligible for confidential treatment when evaluating the confidentiality of supporting documentation submitted as described in proposed 40 CFR 99.13(c) or (d) (see section IV.B.3. for additional information on supporting documentation).

3. Information for Which the EPA Is Not Proposing a Confidentiality Determination

This section describes information for which the EPA is not proposing a confidentiality determination. The EPA would initially treat this information as confidential upon receipt, if the submitter claimed it as such, until a case-by-case determination is made by the Agency under the 40 CFR part 2 process.

We do not expect emission data to be submitted in supporting documentation, but we are proposing that information in supporting documentation as described in proposed 40 CFR 99.13(c) (*i.e.,* information not listed in proposed 40 CFR 98.13(a) or (b) as not eligible for confidential treatment) would be treated as confidential until a case-by-case determination is made under the 40 CFR part 2 process. The EPA is also proposing that information provided in software comments fields as described in proposed 40 CFR 99.13(d) would not be eligible for confidential treatment if it is listed in proposed 40 CFR 98.13(a) or (b) as not eligible for confidential treatment. Otherwise, the EPA would treat the information as confidential until a case-by-case determination is made under the 40 CFR part 2 process, as specified in proposed 40 CFR 99.13(c). The EPA recognizes that supporting documentation and reporter comments may include information that is sensitive or proprietary, such as detailed process designs or site plans. Because the exact nature of this documentation cannot be predicted with certainty, the EPA proposes to make case-by-case confidentiality determinations under CAA section 114(c) for any supporting documentation or comments claimed confidential by applicants either upon receipt of such information or upon a request for such information after receipt.

C. Proposed Amendments to 40 CFR Part 2

As previously discussed, pursuant to CAA section 114(c), the EPA must make available to the public data submitted under part 99, except for data (other than emission data) that are considered confidential under CAA section 114(c). Accordingly, the EPA may release part 99 data without further notice after submission to the EPA in accordance with the EPA's determinations of their confidentiality status in the final rule. Specifically, the EPA may release part 99 data that are determined in the final rule to be emission data or not otherwise entitled to confidential treatment under CAA section 114(c) (*i.e.,* ''non-CBI''). For data elements that we determine to be entitled to confidential treatment under CAA section 114(c), the EPA would release or publish such data only if the information can be aggregated in a manner that would protect the confidentiality of these data at the facility level. Existing regulations in 40 CFR part 2, subpart B set forth procedural steps that the EPA must follow before releasing any information, either on the Agency's own initiative or in response to requests made pursuant to FOIA. In particular, the EPA is generally required to make case-by-case confidentiality determinations and to notify individual reporters before disclosing information that businesses have submitted with a confidentiality claim. As discussed in section IV.B of this preamble, in light of the voluminous data the EPA receives under subpart W of part 98 and the multiple procedural steps required under 40 CFR part 2, subpart B, the EPA would not be able to make part 99 data (determined to be emission data or non-CBI) publicly available in a timely fashion if it were required to make separate confidentiality determinations based on each submitter's individual claim of confidentiality.

To facilitate timely release of GHG data collected under part 99 that are emission data or non-CBI, the EPA proposes to amend 40 CFR 2.301, Special rules governing certain information obtained under the Clean Air Act. Specifically, the EPA is proposing to revise 40 CFR 2.301(d) to specify that the special rules for data submitted under part 98 would also apply to part 99. Under the proposed amendment, the EPA may release part 99 data that are determined to be emission data or information determined to be not entitled to confidential treatment upon finalizing the confidentiality status of these data.

Consistent with the 40 CFR part 2 procedures, the approach proposed in this rulemaking would provide the WEC obligated party an opportunity to justify and substantiate any confidentiality claim they may have for the data they are required to submit (except for emission data and other data not entitled to confidential treatment pursuant to CAA section 114(c)). In addition, WEC obligated parties have the benefit of seeing the EPA's rationales and analyses prior to submitting any justification, information that they would not otherwise have under the current 40 CFR part 2 procedures. As more fully explained in section IV.E of this preamble, the WEC obligated party must provide comment explaining why it disagrees with the rationale provided by the EPA for each particular data element it intends to claim confidential and must provide information to explain how the business customarily and actually treats the information as confidential. The EPA will consider comments received on this proposal before finalizing the confidentiality determinations.

The EPA solicits comment on the proposed amendments to 40 CFR 2.301(d), Special rules governing certain information obtained under the CAA for data submitted under part 99.

D. Proposed Changes to Confidentiality Determinations for Data Elements Reported Under Subpart W

The industry segment waste emissions thresholds are calculated pursuant to 40 CFR 99.20. Except for facilities in the Offshore Petroleum and Natural Gas Production industry segment or the Onshore Petroleum and Natural Gas Production industry segment that have no natural gas sent to sale, each threshold is calculated by multiplying the specified natural gas throughput for that industry segment by two constant values, the density of methane and the industry segment-specific methane intensity threshold (as summarized in Table 2 of this preamble). As noted in section IV.B.1.a. of this preamble, the EPA is proposing that the facility waste emissions thresholds and industry segment waste emissions thresholds are emission data and would therefore be made publicly available. For two industry segments, Onshore Natural Gas Processing and Onshore Natural Gas Transmission Compression, throughput quantities similar to those specified in the industry segment waste emissions threshold calculations have historically not been made publicly available under subpart W. However, for WEC applicable facilities, once the industry segment-specific waste emissions thresholds are made publicly available, the throughputs can be calculated based on available information.

Therefore, the EPA is proposing to address confidentiality determinations for two subpart W data elements as part of this rulemaking. For the Onshore Natural Gas Processing industry segment, a new data element was proposed as part of 2023 Subpart W Proposal, the quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year, in thousand standard cubic feet, reported under proposed § 98.236(aa)(3)(ix). The EPA made a final determination in 79 FR 70352 (November 25, 2014) that the quantity of natural gas received at the gas processing plant in the calendar year (reported under 40 CFR 98.236(aa)(3)(i)) and the quantity of processed (residue) gas leaving the gas processing plant (reported under 40 CFR 98.236(aa)(3)(ii)), should be maintained as confidential. As explained in 79 FR 70352 (November 25, 2014), the reporting of this information to the Energy Information Administration is less frequent than required under subpart W, and the EPA had not identified any reliable public sources of the quantity of residue gas produced. In the June 2023 memorandum *Proposed Confidentiality Determinations and Emission Data Designations for Data Elements in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems* (Docket ID No. EPA–HQ–OAR–2023–0234–0167), the EPA stated that the proposed new data element under 40 CFR 98.236(aa)(3)(ix) would collect similar information to 40 CFR 98.236(aa)(3)(ii). As a result, the EPA proposed to determine that the information collected under 40 CFR 98.236(aa)(3)(ix) would be eligible for confidential treatment.

However, if the EPA finalizes the proposed determination that the industry segment-specific waste emissions thresholds are emission data, then those industry segment-specific waste emissions thresholds would be made publicly available as emission data. Therefore, the EPA is no longer proposing a confidentiality determination for this throughput quantity data element (*i.e.,* the quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year) under part 98. The confidentiality status of this data element would be evaluated on a case-by-case basis, in light of any publicly available information and in accordance with the existing regulations in 40 CFR part 2, subpart B, upon receipt of a public request for these data elements.

For Onshore Natural Gas Transmission Compression, the EPA previously decided in 2014 not to make a confidentiality determination that would apply for all facilities for 40 CFR 98.236(aa)(4)(i), the quantity of gas transported through a compressor station. In 79 FR 70352 (November 25, 2014), the EPA explained that we proposed that this data element would not be eligible for confidential treatment because natural gas transmission sector is heavily regulated by FERC and state commissions, resulting in a lack of competition between companies. However, we received comments from this industry sector noting that FERC Order 636 had introduced greater competition to this sector and that some companies charge customers less than the FERC approved rates because of competitive market pressures. The commenters indicated that quantity of gas transported through the compressor station would provide information on the quantity of gas transported by a specific pipeline, which may potentially cause competitive harm to some pipeline companies operating in more competitive market areas. Since the determination would depend on the particular market conditions for each company, the EPA did not make a determination for the data element that would apply for all reporters.[43]

In this rulemaking, the EPA is not proposing to change that previous decision and is still not proposing a confidentiality determination for the quantity of natural gas transported through a compressor station. While the Supreme Court's 2019 decision in *Argus Leader* altered the review criteria for confidentiality determinations from the Agency's 2014 decision, the basis provided by commenters to justify the confidential nature of the information is still relevant. For information pertaining to the quantity of gas transported through a compressor station collected under part 99, the EPA will conduct reviews of any claims made under the existing regulations in 40 CFR part 2, subpart B, upon receipt of a public request for this information. Any such reviews will consider the public availability of the same or similar

[43] Prior to *Argus Leader,* the EPA considered whether the business had satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position when evaluating claims of confidentiality.

information, including WEC filings, as part of the determination process.

E. Request for Comments on Proposed Category Assignments, Confidentiality Determinations, or Reporting Determinations

This rulemaking provides affected entities that would be subject to part 99, other stakeholders, and the general public an opportunity to provide comment on the proposed amendment to 40 CFR 2.301(d) and the proposed confidentiality determinations for part 99 data, including our proposed categories of emission data and the proposed confidentiality determinations for each data element that is not considered emission data. By proposing emission data and confidentiality determinations prior to data reporting through this proposal and rulemaking process, we are providing potentially affected entities an opportunity to submit comments, particularly comments addressing any data elements not entitled to confidential treatment under this proposal, but which companies customarily and actually treat as private. This opportunity to submit comments is intended to provide reporters with the opportunity to substantiate their confidentiality claims that would ordinarily be afforded when the EPA considers claims for confidential treatment of information in case-by-case confidentiality determinations under 40 CFR part 2. In addition, the comment period provides an opportunity to respond to the EPA's proposed determinations with more information for the Agency to consider prior to finalization. We will evaluate the comments on our proposed determinations, including claims of confidentiality and information substantiating such claims, before finalizing the confidentiality determinations. Please note that this will be reporters' only opportunity to substantiate a confidentiality claim for data elements included in this proposed rule where information being reported is proposed to be not entitled to confidential treatment. Upon finalizing the confidentiality determinations and reporting determinations of the data elements identified in this proposed rule, the EPA plans to release or withhold these data without further notice in accordance with proposed 40 CFR 2.301(d), which contains special provisions governing the treatment of part 99 data for which confidentiality determinations have been made through rulemaking pursuant to CAA sections 114, 136, and 307(d).

When submitting comments regarding the confidentiality determinations we are proposing in this action, please identify each individual proposed data element on which you are commenting and whether you consider the element to be confidential or do not consider to be ''emission data'' in your comments. If the data element has been designated as ''emission data,'' please explain why you do not believe the information meets the definition of ''emission data'' as defined in 40 CFR 2.301(a)(2)(i). If the data has not been designated as ''emission data'' and is proposed to not be entitled to confidential treatment, please explain specifically how the data element is commercial or financial information that is both customarily and actually treated as private. Particularly describe the measures currently taken to keep the data confidential and how that information has been customarily treated by your company and/or business sector in the past. This explanation is based on the requirements for confidential treatment set forth in *Argus Leader.*

Members of the public may also discuss how this data element may be different from or similar to data that are already publicly available, including data already collected and published annually by the GHGRP, as applicable. Please submit information identifying any publicly available sources of information containing the specific data elements in question. Data that are already available through other sources would likely be found not to qualify for confidential treatment. In your comments, please identify the manner and location in which each specific data element you identify is publicly available, including a citation. If the data are physically published, such as in a book, industry trade publication, or Federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and International Standard Book Number (ISBN) or other identifier. For data published on a website, provide the address of the website, the date you last visited the website and identify the website publisher and content author. Please avoid conclusory and unsubstantiated statements, or general assertions regarding the confidential nature of the information.

In addition to soliciting comment on our proposed confidentiality designations and proposed amendments to 40 CFR 2.301, we are also soliciting comment on the following specific issues relevant to the proposed confidentiality determinations:

''*Emission Data*'' *determination.* As previously discussed, ''emission data'' cannot be kept confidential per CAA section 114. The EPA is seeking comment on the part 99 data elements proposed to be considered ''emission data.'' Please specify exactly what part 99 data you think should be considered emission data, describe what part 99 data you think should not be emission data and why (and whether such non-emission data should be considered confidential and why), and clearly explain how the suggested definition of ''emission data'' would be consistent with the ''necessary to determine'' clause in 40 CFR 2.301, as well as with the purpose behind the statutory language.

Individual determinations. The EPA is proposing confidentiality determinations by data element for the majority of the data elements in part 99. We are soliciting comment on whether there are data elements proposed to be included in 40 CFR 99.13(a) and (b) for which we should not finalize a confidentiality determination for the data element as not eligible for confidential treatment and instead make no determination for the data element, such that the confidentiality status of this data element would be evaluated on a case-by-case basis, in light of any publicly available information and in accordance with the existing CBI regulations in 40 CFR part 2, subpart B, upon receipt of a public request for these data elements. If respondents believe that EPA should not make a determination for a specific data element, please describe specifics of when a case-by-case determination would be necessary.

Changes to determinations for subpart W throughputs. We request comment on the approach for the subpart W data elements specified in section IV.D. of this preamble. In particular, we request comment on no longer proposing a confidentiality determination for the quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sale without being processed by the facility in the calendar year, in thousand standard cubic feet, reported under proposed 40 CFR 98.236(aa)(3)(ix). We also request comment on the proposal to continue not making a confidentiality determination for the quantity of natural gas transported through a compressor station under 40 CFR 98.236(aa)(4)(i), as well as the criteria that should be used to conduct a case-by-case evaluation of the confidentiality of the data. We also request comment on whether these two data elements are customarily and actually treated as confidential, and if so, what approaches the EPA could use to treat the information as confidential while still making all emission data

publicly available, as required by CAA section 114(c).

V. Impacts of the Proposed Amendments

In accordance with the requirements of Executive Order 12866, the EPA projected the emissions reductions, costs, benefits, and transfer payments that may result from this proposed action if finalized as proposed. These results are presented in detail in the *Regulatory Impact Analysis of the Proposed Waste Emission Charge* (RIA) accompanying this proposal developed in response to Executive Order 12866 and available in the docket to this rulemaking, Docket ID No. EPA–HQ–OAR–2023–0434. This section provides a brief summary of the RIA.

The WEC does not directly require emissions reductions from applicable facilities or emissions sources. However, by imposing a charge on methane emissions that exceed waste emissions thresholds, oil and natural gas facilities subject to the WEC are expected to perform methane mitigation actions and make operational changes where the costs of those changes are less than the WEC payments that could be avoided by reducing methane emissions. In addition, because VOC and HAP emissions are emitted along with methane from oil and natural gas industry activities, reductions in methane emissions as a result of the WEC also result in co-reductions of VOC and HAP emissions.

The RIA accompanying this proposal analyzes emissions changes and economic impacts of the WEC that arise through two pathways: 1) through the application of cost-effective methane mitigation technologies, and 2) through changes in oil and natural gas production and prices resulting from the WEC and associated mitigation responses. The analysis of methane mitigation is based on bottom-up engineering cost and mitigation potential information for a range of methane mitigation technologies. Application of methane mitigation technologies reduce WEC payments for WEC obligated parties by reducing methane emissions compared to a baseline without additional methane mitigation actions. The analysis assumes that methane mitigation is implemented where the engineering control costs are less than the avoided WEC payments for a particular mitigation technology.

Additionally, oil and natural gas firms may change their production and operational decisions in response to the WEC. This potential impact is modeled using a partial equilibrium model of the crude oil and natural gas markets. The total cost of methane mitigation and WEC payments is added as an increase to production costs, resulting in changes in equilibrium production of oil and natural gas and associated emissions. Projected WEC payments are estimated after methane emissions reductions from both methane mitigation and economic impacts are accounted for.

Using emissions reported to subpart W for RY2021 as an illustrative example, Table 1–1 of the RIA shows that the WEC would be imposed on less than 15 percent of national methane emissions from petroleum and natural gas systems. Total methane emissions reported to subpart W are significantly less than national methane emissions from the U.S. Greenhouse Gas Inventory. WEC-applicable facilities are the subset of GHGRP facilities that report at least 25,000 mt CO_2e to subpart W industry segments subject to the WEC. It is also important to note that the WEC would only apply to methane emissions that are above the emissions threshold, not for all emissions from WEC-applicable facilities. The WEC has exemptions related to regulatory compliance, emissions from plugged wells, and unreasonable delay in environmental permitting, although these provisions do not impact the illustrative results in Table 1–1 of the RIA. Finally, emissions subject to WEC accounts for netting of emissions between facilities. Under the proposed WEC, facilities with emissions below their emissions threshold may reduce emissions subject to the WEC at other facilities with emissions above the emissions threshold where those facilities are under common ownership or control.

The benefit-cost analysis contained in the RIA accompanying this rulemaking for the WEC considers the potential benefits and costs of the WEC arising from cost-effective mitigation actions under the WEC as well as the potential transfers from affected operators to the government in payments. Costs include engineering costs for methane mitigation actions and costs resulting from production changes in oil and gas energy markets under this rule. While the EPA expects a range of health and environmental benefits from reductions in methane, VOC, and HAP emissions under the WEC, the monetized benefits of the rule are limited to the estimated climate benefits from projected methane emissions reductions. These benefits are based on the social cost of greenhouse gases (SC–GHG). A screening-level analysis of ozone-related benefits from projected VOC reductions can be found in Appendix A of the RIA. However, these estimates are treated as illustrative and are not included in the quantified benefit-cost comparisons in the RIA.

The EPA estimates that this action will result in cumulative emissions reductions of 960 thousand metric tons of methane over the 2024 to 2035 period. These reductions represent about 33 percent of methane emissions that would be subject to the WEC before accounting for the adoption of cost-effective emission reduction technologies. Virtually all the reduced emissions result from mitigation activities undertaken by industry to reduce WEC payments. Less than one percent of reductions are associated with decreased production activity in the oil and gas sector resulting from the proposed rule. In addition to methane emissions reductions, the WEC is estimated to result in reductions of 140 thousand metric tons of VOC and five thousand metric tons of HAP.

The WEC has important interactions and is designed to work hand-in-hand with the NSPS and EG for the Oil and Natural Gas Sector by accelerating the adoption of cost-effective methane mitigation technologies, including those that would eventually be required under the NSPS or EG. The annual projected emissions reductions, costs, and WEC obligations are significantly affected by these interactions.

The EPA proposed updates to the Oil and Gas NSPS OOOOb/EG OOOOc in 2021, published a supplemental proposal in 2022, and finalized in December 2023. In addition to requirements already in place, these rules include standards for many of the major sources of methane emissions in the oil and natural gas industry. To avoid double counting of benefits and costs, the baseline for this proposal includes reductions resulting from the NSPS OOOOb/EG OOOOc based on information from the 2023 Final RIA. Specifically, that analysis showed deep reductions in methane emissions beginning to take effect in 2028. As facilities implement emission controls required by the NSPS and EG, emissions subject to the WEC decline.

The second interaction between the WEC and NSPS OOOOb/EG OOOOc is the regulatory compliance exemption provision of the WEC. Under this provision, when certain conditions are met with respect to the implementation of the Oil and Gas NSPS OOOOb/EG OOOOc, applicable facilities in compliance with their applicable methane emissions requirements are exempted from the WEC. The analysis in the RIA assumes that the regulatory compliance exemption takes effect in 2027, such that in 2027 and later,

facilities in the industry segments subject to requirements under the NSPS OOOOb/EG OOOOc do not owe WEC payments.

Climate benefits associated with this proposed rule are the monetized value of GHG reductions using the SC–GHG, which calculates the avoided climate related damages from reducing GHG emissions. Methane is the principal component of natural gas. As discussed in section I.C.1. of this preamble, methane is also a potent GHG that, once emitted into the atmosphere, absorbs terrestrial infrared radiation, which in turn contributes to increased global warming and continuing climate change.

This proposed rulemaking is projected to reduce VOC emissions, which are a precursor to ozone. Ozone is not generally emitted directly into the atmosphere but is created when its two primary precursors, VOC and oxides of nitrogen (NO_X), react in the atmosphere in the presence of sunlight. Emissions reductions under the WEC may decrease ozone formation, human exposure to ozone, and the incidence of ozone-related health effects. VOC emissions are also a precursor to $PM_{2.5}$, so VOC reductions may also decrease human exposure to $PM_{2.5}$ and the incidence of $PM_{2.5}$- related health effects.

Available emissions data show that several different HAP are emitted from oil and natural gas operations. Emissions of eight HAP make up a large percentage of the total HAP emissions by mass from the oil and natural gas sector: toluene, hexane, benzene, xylenes (mixed), ethylene glycol, methanol, ethyl benzene, and 2,2,4-trimethylpentane.[44] Reductions of HAP emissions under the WEC may reduce exposure to these and other HAP.

In section 9.3 of the RIA, the EPA identifies existing potential environmental justice issues for the communities in counties that have emissions sources that are expected to owe the WEC charge before accounting for mitigation actions and thus may be positively affected by emissions changes under the proposal. Compared to the national average, these communities include a higher percentage of individuals who identify as racial and ethnic minorities, have lower average incomes, and have slightly elevated health risks associated with various air emissions. Reductions in VOC and HAP emissions as a result of the WEC are expected to benefit communities in these counties. Because the WEC does not directly require emissions reductions, the EPA has not projected specific locations where emissions reductions might occur. In addition, detailed proximity analysis is infeasible because the emissions affected by the WEC occur at hundreds of thousands of locations.

The total cost of the proposed rule includes the engineering costs for methane mitigation actions implemented by the oil and natural gas industry in order to avoid or reduce WEC obligations. This includes the initial capital costs required to implement and install the specific mitigation technology. In addition, for mitigation technologies with expected lifetimes greater than one-year, annual recurring operations and maintenance costs, which include labor, energy and materials, are also incorporated. Finally, the total mitigation costs also include the avoided cost of natural gas losses.

The social cost of energy market impacts is the loss in consumer and producer surplus value from changes in natural gas market production and prices. The economic impacts analysis uses a partial equilibrium model and estimates that the impact of the gas market is minimal, with the largest impact occurring in the first few years with a price increase of less than 0.1 percent and a quantity reduction of less than 0.1 percent.

Table 5 presents results of the benefit-cost analysis for the proposed WEC. It presents the present value (PV) and equivalent annual value (EAV), estimated using discount rates of 2, 3, and 7 percent, of the changes in quantified benefits, costs, and net benefits relative to the baseline.[45] These values reflect an analytical time horizon of 2024 to 2035, are discounted to 2023, and are presented in 2019 constant dollars. The table includes consideration of the non-monetized benefits associated with the emissions reductions projected under this proposal.

TABLE 4—PROJECTED EMISSIONS REDUCTIONS UNDER THE PROPOSED RULE

[2024–2035 Total]

Pollutant	Emissions reductions (2024–2035 Total)
Methane (thousand metric tons)[a]	960
VOC (thousand metric tons)	140
Hazardous Air Pollutant (thousand short tons)	5
Methane (million metric tons CO_2e)[b]	27

[a] To convert from metric tons to short tons, multiply the short tons by 1.102. Alternatively, to convert from short tons to metric tons, multiply the short tons by 0.907.

[b] Carbon dioxide equivalent (CO_2e). Calculated using a global warming potential of 28.

[44] U.S. EPA. The Benefits and Costs of the Clean Air Act from 1990 to 2020. Washington, DC. Retrieved from *https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf.*

[45] Monetized climate effects are presented under a 2 percent near-term Ramsey discount rate, consistent with EPA's updated estimates of the SC–GHG. The 2003 version of OMB's Circular A–4 had generally recommended 3 percent and 7 percent as default discount rates for costs and benefits, though as part of the Interagency Working Group on the Social Cost of Greenhouse Gases, OMB had also long recognized that climate effects should be discounted only at appropriate consumption-based discount rates. OMB finalized an update to Circular A–4 in 2023, in which it recommended the general application of a 2.0 percent discount rate to costs and benefits (subject to regular updates), as well as the consideration of the shadow price of capital when costs or benefits are likely to accrue to capital. Because the SC–GHG estimates reflect net climate change damages in terms of reduced consumption (or monetary consumption equivalents), the use of the discount rate estimated using the average return on capital (7 percent in OMB Circular A–4 (2003)) to discount damages estimated in terms of reduced consumption would inappropriately underestimate the impacts of climate change for the purposes of estimating the SC–GHG. See section 6.1 of the RIA for more discussion.

TABLE 5—BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSED RULE, 2024 THROUGH 2035

[Dollar estimates in millions of 2019 dollars] [a]

	2 percent near-term Ramsey discount rate					
	Present value	Equivalent annual value	Present value	Equivalent annual value	Present value	Equivalent annual value
Climate Benefits [b]	$1,900	$180	$1,900	$180	$1,900	$180
	2 percent discount rate		3 percent discount rate		7 Percent discount rate	
	Present value	Equivalent annual value	Present value	Equivalent annual value	Present value	Equivalent annual value
Total Social Costs	$390	$37	$380	$38	$340	$43
Cost of Methane Mitigation	$360	$34	$350	$35	$320	$40
Cost of Energy Market Impacts	$30	$3	$29	$3	$26	$3
Net Benefits	$1,500	$140	$1,500	$140	$1,600	$140
Non-Monetized Benefits	Climate and ozone health benefits from reducing 960 thousand metric tons of methane from 2024 to 2035. $PM_{2.5}$ and ozone health benefits from reducing 140 thousand metric tons of VOC from 2024 to 2035.[c] HAP benefits from reducing 5 thousand metric tons of HAP from 2024 to 2035. Visibility benefits. Reduced vegetation effects.					

[a] Values rounded to two significant figures. Totals may not appear to add correctly due to rounding.

[b] Climate benefits are based on reductions in methane emissions and are calculated using three different estimates of the social cost of methane ($SC–CH_4$) (under 1.5 percent, 2.0 percent, and 2.5 percent near-term Ramsey discount rates). For the presentational purposes of this table, we show the climate benefits associated with the $SC–CH_4$ at the 2 percent near-term Ramsey discount rate. Please see Table 6–5 of the RIA for the full range of monetized climate benefits estimates.

[c] A screening-level analysis of ozone benefits from VOC reductions can be found in Appendix A of the RIA.

WEC payments are transfers and do not affect total net benefits to society as a whole because payments by oil and natural gas operators are offset by receipts by the government. Therefore, from a net-benefit accounting perspective, transfers are considered separately from costs and benefits (and are therefore not included in Table 5). As explained further in section 2.7 of the RIA, the approach taken here is in line with OMB guidance and the approach taken for RIAs for other rules impacting payments to the government, such as the Bureau of Land Management (BLM)'s waste prevention rule.

One of the reasons that transfers are not considered costs is because they represent payments to the U.S. Treasury that do not affect total resources available to society. Payments to the U.S. Treasury can then be used to fund other programs, and the pairing of revenue collection (*e.g.,* the WEC payments) with commensurate expenditures (*e.g.,* financial assistance programs) by the federal government can be designed to be revenue neutral. The Methane Emission Reduction Program created under CAA section 136 includes both collection and expenditure components. In addition to establishing the WEC, another key purpose of CAA section 136 is to encourage the development of innovative technologies in the detection and mitigation of methane emissions. See 168 Cong. Rec. E869 (August 23, 2022) (statement of Rep. Frank Pallone). CAA section 136(a) and (b) provides $1.55 billion to, among other things, help finance the early adoption of emissions reduction methodologies and technologies and to support monitoring of methane emissions. These incentives for methane mitigation and monitoring complement the WEC.

The WEC has the effect of better aligning the economic incentives of oil and natural gas companies with the costs and benefits faced by society from oil and gas activities. In the baseline scenario the environmental damages resulting from methane emissions from the oil and gas sector are a negative externality spread across society as a whole. Under the WEC, this negative externality is internalized, oil and gas companies are required to make WEC payments in proportion to the climate damages of methane emissions subject to the WEC. Alternatively, firms can avoid making WEC payments by mitigating their emissions generating climate benefits associated with the amount of mitigation.

Table 6 provides details of the calculation steps used to estimate projected WEC obligations and climate damages based on projected emission subject to WEC. In order to compare projected WEC payments to climate damages from emissions subject to the WEC, WEC payments are converted from nominal dollars to 2019 constant dollars using a chain-weighted GDP price index from the 2023 Annual Energy Outlook. Projected WEC payments after accounting for methane mitigation and energy market impacts are estimated to be about $750 million nominal dollars in 2024, and then drop significantly as the regulatory compliance exemption takes effect in 2027.

TABLE 6—BENEFITS, COSTS, AND NET BENEFITS OF THE PROPOSED RULE, 2024 THROUGH 2035
[Dollar Estimates in Millions of 2019 Dollars] [a]

Year	Methane emissions subject to WEC in policy scenario (thousand metric tons)	Charge specified by Congress (nominal $ per metric ton)	WEC payments in policy scenario (million nominal $)	WEC payments in policy scenario (million 2019$)	SC–CH_4 Values at 2% discount rate (2019$ per metric ton)	Climate damages from emissions subject to WEC (million 2019$) [a]
2024	830	$900	$750	$620	$1,900	$1,600
2025	650	1,200	770	630	2,000	1,300
2026	430	1,500	640	510	2,100	890
2027	9	1,500	13	10	2,200	18
2028	9	1,500	13	10	2,200	19
2029	9	1,500	13	10	2,300	20
2030	9	1,500	13	9	2,400	20
2031	9	1,500	13	9	2,500	21
2032	9	1,500	13	9	2,500	21
2033	8	1,500	13	9	2,600	21
2034	8	1,500	13	8	2,700	21
2035	8	1,500	13	8	2,800	21
Total 2024–2035	2,000	.....	2,300	1,800	.....	4,000

[a] Climate damages are based on remaining methane emissions subject to WEC after accounting for emissions reductions and are calculated using three different estimates of the social cost of methane (SC–CH_4) (under 1.5 percent, 2.0 percent, and 2.5 percent near-term Ramsey discount rates). For the presentational purposes of this table, we show the climate benefits associated with the SC–CH_4 at the 2 percent near-term Ramsey discount rate.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a ''significant regulatory action'' as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket for this rulemaking, Docket ID No. EPA–HQ–OAR–2023–0434. The EPA prepared an analysis of the potential impacts associated with this action. This analysis, *Regulatory Impact Analysis of the Proposed Waste Emission Charge,* is also available in the docket to this rulemaking and is briefly summarized in section V. of this preamble.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2787.01. You can find a copy of the ICR in the docket for this rule, Docket ID No. EPA–HQ–OAR–2023–0434, and it is briefly summarized here.

The EPA estimates that the proposed rule would result in an increase in burden. The burden associated with the proposed rule is due to reporting and recordkeeping requirements in the proposed rule.

The respondent reporting burden for this collection of information is estimated to be an annual average of 12,799 hours and $1,700,304 over the 3 years covered by this information collection, which includes an annual average of $1,669,752 in labor costs, $0 in operation and maintenance costs, and $30,552 in capital costs. The annual average incremental burden to the EPA for this period is anticipated at 31,200 hours and $5,670,955 ($2023) over the 3 years covered by this information collection, which includes an annual average of $2,004,288 in labor costs and $3,666,667 in non-labor costs.

Respondents/affected entities: Owners and operators of petroleum and natural gas systems that must submit a WEC filing to the EPA to comply with proposed 40 CFR part 99.

Respondent's obligation to respond: The respondent's obligation to respond is mandatory under the authority provided in CAA sections 114 and 136.

Estimated number of respondents: 536.

Frequency of response: Annually.

Total estimated burden: 12,799 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1.7 million (per year), includes $30,552 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. OMB must receive comments no later than February 26, 2024. The EPA will respond to any ICR-related comments in the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this proposed action would not have a significant economic impact on a substantial number of small entities under the RFA. The small entities that would be subject to the proposed requirements of this action are small businesses in the petroleum and natural gas industry. Small entities include small businesses, small organizations, and small governmental jurisdictions. The EPA has determined that some small entities are affected because their processes emit methane that must be reported under subpart W and thus may be subject to WEC.

To evaluate whether this proposed rule would have a significant economic impact on a substantial number of small entities, the EPA conducted a small entity analysis that evaluated the costs of the proposed rule on small entities

identified in the reporting year (RY) 2021 subpart W dataset. The EPA used reported facility-to-parent company and facility-to-owner or operator data to link facilities to WEC obligated parties. The EPA then reviewed the available RY 2021 data for the WEC obligated parties of subpart W facilities to determine whether the reporters were part of a small entity and whether the annualized costs of the proposal would have a significant impact on a substantial number of small entities. The number of small entities potentially affected by the proposed WEC regulation were estimated based on the information collected for 472 WEC obligated parties. Of these, 439 were identified as small entities. Although the screening analysis suggests that some small entities may have cost-to-revenue ratios that exceed 3 percent (approximately 17 percent), the EPA's evaluation of the impacts to small entities relied on several methodologies involving conservative assumptions. For example, the identification and classification of subpart W parent entities reporting under more than one NAICS code resulted in a designation of ''small'' based on whether the business information available met the SBA size classification threshold for a single NAICS code. In addition to the conservative assumptions, there were further mitigating factors not included in the screening analysis that would likely significantly reduce compliance costs, and, as a result, cost-to-revenue-ratios. For example, the compliance cost estimate used only the defined WEC cost and did not account for early adoption of mitigation measures that could lower an entity's emissions below the threshold and therefore result in no WEC charge. Details of this analysis are presented in the *Regulatory Impact Analysis of the Proposed Waste Emissions Charge,* available in the docket for this rulemaking. The cumulative effect of the mitigating factors and conservative assumptions used in the screening analysis indicates that, overall, the proposed rule would not likely have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains a federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Accordingly, the EPA has prepared under section 202 of the UMRA a written statement of the benefit-cost analysis, which can be found in Section V of this preamble and in the *Regulatory Impact Analysis of the Proposed Waste Emissions Charge* (RIA), available in the docket for this rulemaking. The proposed action in part implements mandate(s) specifically and explicitly set forth in CAA section 136.

The applicability, magnitude of charge, methane emissions subject to charge, and exemptions from charge for the WEC program are established by CAA section 136(c) through (g). Given that this framework is required by statute, it is not possible for EPA to consider regulatory alternatives that are inconsistent with these elements. As such, to evaluate the benefits and costs of the proposed rule, in the RIA accompanying this rulemaking two scenarios were evaluated: a baseline scenario (*i.e.,* not including the effects of the WEC program) and a policy scenario inclusive of the costs, benefits, and transfers projected under the proposed rule. This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule does not apply to governmental entities unless the government entity owns a facility in the applicable petroleum and gas industry segments and reports more 25,000 mt CO_2e to subpart W of the GHGRP. It would not impose any implementation responsibilities on state, local, or tribal governments and it is not expected to increase the cost of existing regulatory programs managed by those governments. Thus, the impact on governments affected by the proposed rule is expected to be minimal.

However, consistent with the EPA's policy to promote communications between the EPA and state and local governments, the EPA sought comments from small governments concerning the regulatory requirements that might significantly or uniquely affect them in the development of this proposed rule. Specifically, the EPA previously published a Request for Information (RFI) seeking public comment in a non-regulatory docket to collect responses to a range of questions related to the Methane Emissions Reduction Program, including related to implementation of the WEC (see Docket ID No. EPA–HQ–OAR–2022–0875). The EPA received five comments from government entities related to implementation of the WEC; these comments were considered during the development of the proposed rule. The EPA continues to be interested in the potential impacts of the proposed rule amendments on state, local, or tribal governments and welcomes comments on issues related to such impacts.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will not apply to governmental entities unless the government entity owns a facility in the applicable petroleum and gas industry segments that and reports more 25,000 mt CO_2e to subpart W of the GHGRP. Therefore, the EPA anticipates relatively few state or local government facilities will be affected. However, consistent with the EPA's policy to promote communications between EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. This proposed regulation will apply directly to petroleum and natural gas facilities that may be owned by tribal governments. However, it will generally only have tribal implications where the tribal entity owns a facility in an applicable industry segment that emits GHGs above threshold levels; therefore, relatively few tribal facilities will be affected. Of the subpart W facilities currently reporting to the GHGRP in RY2021, we identified four facilities currently reporting to part 98, subpart W that are owned or partially owned by one tribal parent company. Based on RY2021 data, all four facilities would be WEC applicable facilities, and the WEC applicable emissions (without consideration of exemptions) for the individual facilities would range from less than 0 mt CH_4 for one facility, up to about 3,500 mt CH_4 for the largest facility (which corresponds to a WEC obligation of $3.1 million). Note that one of the facilities is within the onshore natural gas processing sector, and thus, this calculation utilizes proxy data of CBI throughput, which may not reflect the actual facility throughput and resulting WEC applicable emissions. Each of the four facilities has a different owner or operator or combination of owners or operators, so the tribe likely

would not be the WEC obligated party for all four facilities. These estimates do not consider any exemptions that might apply for the three facilities with emissions greater than the facility waste emissions threshold.

In addition to tribes that would be directly impacted by the WEC due to owning a facility subject to the charge, the EPA anticipates that tribes could be impacted in cases where facilities subject to the charge are located in Indian country. For example, the EPA reviewed the location of the production wells reported by facilities under the Onshore Petroleum and Natural Gas Production industry segment and found production wells reported under subpart W on lands associated with approximately 20 tribes. Therefore, although the EPA anticipates that at most only one tribe may be designated as a WEC obligated party and has the potential to be subject to the WEC, the EPA has sought opportunities to provide information to tribal governments and representatives during rule development. On November 4, 2022, the EPA published an RFI seeking public comment on a range of questions related to the Methane Emissions Reduction Program, including implementation of the WEC (see Docket ID No. EPA–HQ–OAR–2022–0875). Further, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA specifically solicits comment on this proposed action from Tribal officials. The EPA will engage in consultation with Tribal officials during the development of this action.

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

The EPA interprets Executive Order 13045 as applying only to regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action would not establish an environmental standard intended to mitigate health or safety risks and does not focus on information-gathering actions concerned with children's health. Therefore, this proposed action is not subject to Executive Order 13045. For the same reasons, the EPA's Policy on Children's Health also does not apply.

Although this proposed action does not establish an environmental standard applicable to methane emissions or mandate methane emissions reductions, it is expected that the WEC implemented under this proposed action would result in elective methane mitigation actions by applicable facilities in the oil and gas industry in order to reduce, or eliminate, the imposition of charges. As such, the EPA believes that the impacts of this proposed action would result in a reduction in an environmental health or safety risk that has a disproportionate effect on children. Accordingly, the Agency has elected to evaluate the environmental health and welfare effects of climate change on children. Greenhouse gases, including methane, contribute to climate change and are emitted in significant quantities by the oil and gas industry. The EPA believes that the implementation of the WEC in this action, if finalized, would improve children's health as a result of methane mitigation actions and operational changes taken by oil and gas applicable facilities to avoid the imposition of WEC. The assessment literature cited in the EPA's 2009 Endangerment Findings concluded that certain populations and life stages, including children, the elderly, and the poor, are most vulnerable to climate-related health effects (74 FR 66524, December 15, 2009). The assessment literature since 2009 strengthens these conclusions by providing more detailed findings regarding these groups' vulnerabilities and the projected impacts they may experience (*e.g.,* the 2016 Climate and Health Assessment).[46] These assessments describe how children's unique physiological and developmental factors contribute to making them particularly vulnerable to climate change. Impacts to children are expected from heat waves, air pollution, infectious and waterborne illnesses resulting in physical and mental health effects from extreme weather events. In addition, children are among those especially susceptible to most allergic diseases, as well as health effects associated with storms and floods. Additional health concerns may arise in low-income households, especially those with children, if climate change reduces food availability and increases prices, leading to food insecurity within households.

[46] USGCRP, 2016: *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment.* Crimmins, A., J. Balbus, J.L. Gamble, C.B. Beard, J.E. Bell, D. Dodgen, R.J. Eisen, N. Fann, M.D. Hawkins, S.C. Herring, L. Jantarasami, D.M. Mills, S. Saha, M.C. Sarofim, J. Trtanj, and L. Ziska, Eds. U.S. Global Change Research Program, Washington, DC, 312 pp. *https://dx.doi.org/10.7930/J0R49NQX.*

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. To make this determination, we compare the projected change in crude oil and natural gas costs and production to guidance articulated in a January 13, 2021 OMB memorandum ''Furthering Compliance with Executive Order 13211, Titled 'Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.' '' [47] With respect to increases in the cost of energy production or distribution, the guidance indicates that a regulatory action produces a significant adverse effect if it is expected to increase costs in excess of one percent. With respect to crude oil production, the guidance indicates that a regulatory action produces a significant adverse effect if it is expected to produce reductions in crude oil supply, in excess of 20 million barrels per year. With respect to natural gas production, the guidance indicates that a regulatory action produces a significant adverse effect if it reduces natural gas production in excess of 40 million thousand cubic feet (mcf) per year.[48] The economic impacts analysis conducted as part of the RIA accompanying this rulemaking estimated a maximum impact on the gas market of a 0.05 percent price increase and a 0.03 percent decrease in production. The highest impact year is estimated to be in 2026, with a production decrease of 10.7 million mcf of natural gas. The analysis projected a maximum impact on the oil market of 0.04 percent price increase and a 0.03 percent decrease in production. The highest impact year is estimated to be in 2026, with an estimated production decrease of 1.27 million barrels of oil. These impacts are substantially below the thresholds available in OMB memoranda as measures of a significant adverse effect on the energy supply. Further discussion of this analysis is available in the *Regulatory Impact Analysis of the Proposed Waste*

[47] See *https://www.whitehouse.gov/wp-content/uploads/2021/01/M-21-12.pdf.*

[48] The 2021 E.O. 13211 guidance memo states that the natural gas production decrease that indicates the regulatory action is a significant energy action is 40 mcf per year. Because this is a relatively small amount of natural gas and previous guidance from 2001 indicated a threshold of 25 million Mcf, we assume the 2021 memo was intended to establish 40 million mcf as the indicator of an adverse energy effect. See *https://www.whitehouse.gov/wp-content/uploads/2017/11/2001-M-01-27-Guidance-for-Implementing-E.O.-13211.pdf.*

Emissions Charge, available in the docket for this rulemaking.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

The EPA believes that the emissions reductions likely to result from this rule will improve health and environmental outcomes for communities facing disproportionate and adverse human health effects from the pollution subject to the waste emissions charge, including environmental justice communities. The EPA proposes, however, to determine that Executive Order 12898 does not apply to this rulemaking because it is a rule that addresses information collection, reporting procedures, and imposition of the waste emission charge directive of CAA section 136. Although the EPA anticipates a reduction in methane and associated co-pollutant emissions from this action, if finalized, these reductions are not the result of emissions standards or mandated reductions.

Although this regulation does not require action that will directly affect human health or environmental conditions, the EPA has identified and addressed environmental justice concerns by electing to conduct a qualitative assessment of the environmental justice outcomes from the proposed action. The EPA believes the human health or environmental conditions that exist prior to this proposed action would result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations, and/or Indigenous peoples. The EPA identified 563 counties where Onshore Petroleum and Natural Gas Production and/or Onshore Petroleum and Natural Gas Gathering and Boosting facilities with emissions that may be above the waste emissions threshold and therefore subject to the WEC operated in 2021. These are the counties where emissions might change due to the WEC. The EPA found that there are generally higher percentages of low income and members of minority groups in these communities who may experience higher than average health risks. The EPA believes that in aggregate the proposed action will result in reduction of methane, hazardous air pollutants, and volatile organic compounds, and, generally, this result will improve environmental justice outcomes.

The information supporting this Executive Order review is contained in the *Regulatory Impact Analysis of the Proposed Waste Emissions Charge,* available in the docket for this rulemaking.

K. Determination Under CAA Section 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this proposed action is subject to the provisions of CAA section 307(d). Section 307(d)(1)(V) of the CAA provides that the provisions of CAA section 307(d) apply to ''such other actions as the Administrator may determine.''

List of Subjects

40 CFR Part 2

Administrative practice and procedure, Confidential business information, Courts, Environmental protection, Freedom of information, Government employees.

40 CFR Part 99

Environmental protection, Greenhouse gases, Natural gas, Petroleum, Reporting and recordkeeping requirements, Penalties.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I, of the Code of Federal Regulations as follows:

PART 2—PUBLIC INFORMATION

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

Subpart B—Confidentiality of Business Information

■ 2. Amend § 2.301 by revising paragraph (d) to read as follows:

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

* * * * *

(d) *Data submitted under part 98 or part 99 of this chapter*—(1) Sections 2.201 through 2.215 do not apply to data submitted under part 98 or part 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be either of the following:

(i) Emission data.

(ii) Data not otherwise entitled to confidential treatment pursuant to section 114(c) of the Clean Air Act.

(2) Except as otherwise provided in this paragraph (d)(2) and paragraph (d)(4) of this section, §§ 2.201 through 2.215 do not apply to data submitted under part 98 or part 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be entitled to confidential treatment. EPA shall treat that information as confidential in accordance with the provisions of § 2.211, subject to paragraph (d)(4) of this section and § 2.209.

(3) Upon receiving a request under 5 U.S.C. 552 for data submitted under part 98 or part 99 of this chapter that EPA has determined, pursuant to sections 114(c) and 307(d) of the Clean Air Act, to be entitled to confidential treatment, the EPA office shall furnish the requestor a notice that the information has been determined to be entitled to confidential treatment and that the request is therefore denied. The notice shall include or cite to the appropriate EPA determination.

(4) Modification of prior confidentiality determination. A determination made pursuant to sections 114(c) and 307(d) of the Clean Air Act that information submitted under part 98 or part 99 of this chapter is entitled to confidential treatment shall continue in effect unless, subsequent to the confidentiality determination, EPA takes one of the following actions:

(i) EPA determines, pursuant to sections 114(c) and 307(d) of the Clean Air Act, that the information is emission data or data not otherwise entitled to confidential treatment under section 114(c) of the Clean Air Act.

(ii) The Office of General Counsel issues a final determination, based on the criteria in § 2.208, stating that the information is no longer entitled to confidential treatment because of change in the applicable law or newly-discovered or changed facts. Prior to making such final determination, EPA shall afford the business an opportunity to submit comments on pertinent issues in the manner described by §§ 2.204(e) and 2.205(b). If, after consideration of any timely comments submitted by the business, the Office of General Counsel makes a revised final determination that the information is not entitled to confidential treatment under section 114(c) of the Clean Air Act, EPA will notify the business in accordance with

the procedures described in § 2.205(f)(2).

* * * * *

■ 3. Add part 99 to read as follows:

PART 99—WASTE EMISSIONS CHARGE

Sec.

Authority: 42 U.S.C. 7401–7671q; 31 U.S.C. 3717.

Subpart A—General Provisions

§ 99.1 Purpose and scope.

(a) This part establishes requirements for owners and operators of certain petroleum and natural gas systems facilities to make filings and be assessed waste emission charges as required by section 136 of the Clean Air Act.

(b) Owners and operators of facilities that are subject to this part must follow the requirements of this subpart and all applicable subparts of this part. If a conflict exists between a provision in subpart A and any other applicable subpart, the requirements of the applicable subpart shall take precedence.

§ 99.2 Definitions.

All terms used in this part shall have the same meaning given in the Clean Air Act, unless as defined in this section. Terms defined here only apply within the context of this rulemaking.

Act means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

Affected facility means, for the purposes of the regulatory compliance exemption of this part, affected facilities, as defined in part 60, subpart A of this chapter, that are subject to methane emissions requirements pursuant to part 60 of this chapter.

Applicable facility means a facility within one or more of the following industry segments, as those industry segment terms are defined in § 98.230 of this chapter. In the case where operations from two or more industry segments are co-located at the same part 98 reporting facility, operations for all co-located segments constitute a single *applicable facility* under this part:

(1) Offshore petroleum and natural gas production.

(2) Onshore petroleum and natural gas production.

(3) Onshore natural gas processing.

(4) Onshore natural gas transmission compression.

(5) Underground natural gas storage.

(6) Liquefied natural gas storage.

(7) Liquefied natural gas import and export equipment.

(8) Onshore petroleum and natural gas gathering and boosting.

(9) Onshore natural gas transmission pipeline.

Carbon dioxide equivalent or CO_2e means the number of metric tons of CO_2 emissions with the same global warming potential as one metric ton of another greenhouse gas and is calculated using Equation A–1 in § 98.2(b) of this chapter.

Designated facility means, for purposes of the regulatory compliance exemption of this part, designated facilities, as defined in § 60.21a(b) of this chapter, subject to methane emissions requirements pursuant to a state, Tribal, or Federal plan implementing part 60 of this chapter.

e-GGRT ID number means the identification number assigned to a facility by the EPA's electronic Greenhouse Gas Reporting Tool for submission of the facility's part 98 report.

Facility applicable emissions means the annual methane emissions, as calculated in § 99.21, associated with a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the WEC applicable facility prior to consideration of any applicable exemptions.

Gas to oil ratio (GOR) means the ratio of the volume of gas at standard temperature and pressure that is produced from a volume of oil when depressurized to standard temperature and pressure.

Gathering and boosting system means a single network of pipelines, compressors and process equipment, including equipment to perform natural gas compression, dehydration, and acid gas removal, that has one or more connection points to gas and oil production and a downstream endpoint, typically a gas processing plant, transmission pipeline, LDC pipeline, or other gathering and boosting system.

Gathering and boosting system owner or operator means any person that holds a contract in which they agree to transport petroleum or natural gas from one or more onshore petroleum and natural gas production wells to a natural gas processing facility, another gathering and boosting system, a natural gas transmission pipeline, or a distribution pipeline, or any person responsible for custody of the petroleum or natural gas transported.

Global warming potential or GWP means the ratio of the time-integrated radiative forcing from the instantaneous release of one kilogram of a trace substance relative to that of one kilogram of a reference gas (*i.e.,* CO_2). GWPs for each greenhouse gas are provided in Table A–1 of part 98, subpart A of this chapter.

Greenhouse gas or GHG means the air pollutants carbon dioxide (CO_2), hydrofluorocarbons (HFCs), methane (CH_4), nitrous oxide (N_2O), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6).

Natural gas means a naturally occurring mixture or process derivative of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface, of which its constituents include, but are not limited to, methane, heavier hydrocarbons and carbon dioxide. Natural gas may be field quality, pipeline quality, or process gas.

Nonproduction sector means facilities in the onshore natural gas processing, the liquefied natural gas storage, the liquefied natural gas import and export equipment, and the onshore petroleum and natural gas gathering and boosting industry segments as those industry segments are defined in § 98.230 of this chapter.

Onshore natural gas transmission pipeline owner or operator means, for interstate pipelines, the person identified as the transmission pipeline owner or operator on the Certificate of Public Convenience and Necessity issued under 15 U.S.C. 717f, or, for intrastate pipelines, the person identified as the owner or operator on the transmission pipeline's Statement of Operating Conditions under section 311 of the Natural Gas Policy Act, or for pipelines that fall under the ''Hinshaw Exemption'' as referenced in section 1(c) of the Natural Gas Act, 15 U.S.C. 717–717 (w)(1994), the person identified as the owner or operator on blanket certificates issued under 18 CFR 284.224. If an intrastate pipeline is not subject to section 311 of the Natural Gas Policy Act (NGPA), the onshore natural gas transmission pipeline owner or operator is the person identified as the owner or operator on reports to the state regulatory body regulating rates and charges for the sale of natural gas to consumers.

Onshore petroleum and natural gas production owner or operator means the person or entity who holds the permit to operate petroleum and natural gas wells on the drilling permit or an operating permit where no drilling permit is issued, which operates a facility in the onshore petroleum and/or natural gas production industry segment (as that industry segment is defined in § 98.230(a)(2) of this chapter). Where petroleum and natural gas wells operate without a drilling or operating permit, the person or entity that pays the State or Federal business income taxes is considered the owner or operator.

Operator means, except as otherwise defined in this section, any person who operates or supervises a facility.

Owner means, except as otherwise defined in this section, any person who has legal or equitable title to, has a leasehold interest in, or control of an applicable facility, except a person whose legal or equitable title to or leasehold interest in the facility arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility shall not be considered an ''owner'' of the facility.

Part 98 report means the annual report required under part 98 of this chapter for owners and operators of certain facilities under the Petroleum and Natural Gas Systems source category.

Petroleum means oil removed from the earth and the oil derived from tar sands and shale.

Production sector means facilities in the offshore petroleum and natural gas production and the onshore petroleum and natural gas production industry segments as those industry segments are defined in § 98.230 of this chapter.

Reporting year means the calendar year during which data are required to be collected for purposes of the annual WEC filing. For example, reporting year 2024 is January 1, 2024 through December 31, 2024, and the annual WEC filing for reporting year 2024 is submitted to EPA by March 31, 2025.

Standard temperature and pressure means 60 °F and 14.7 psia.

Transmission sector means facilities in the onshore natural gas transmission compression, the underground natural gas storage, and the onshore transmission pipeline industry segments as those industry segments are defined in § 98.230 of this chapter.

Waste emissions threshold means the metric tons of methane emissions calculated by multiplying WEC applicable facility throughput by the industry segment-specific methane intensity thresholds established in CAA 136(f) and the density of methane (0.0192 metric ton per thousand standard cubic feet).

WEC means waste emissions charge, the charge established in CAA 136(c) on methane emissions that exceed certain thresholds.

WEC applicable emissions means the annual methane emissions, as calculated in § 99.21, associated with a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the WEC applicable facility after consideration of any applicable exemptions.

WEC applicable facility means an applicable facility, as defined in this section, for which the owner or operator of the part 98 reporting facility reports GHG emissions under part 98, subpart W of this chapter of more than 25,000 metric tons CO_2e.

WEC filing means the report and payment of applicable WEC obligation required to be submitted by a WEC obligated party under the requirements of this chapter. The WEC filing contains information regarding the WEC obligated party and WEC applicable facilities for the previous reporting year. For example, the WEC filing due on March 31, 2025 contains information regarding reporting year 2024, which is January 1, 2024 through December 31, 2024.

WEC obligated party means the owner or operator as defined in this section for the applicable industry segment as of December 31 of the reporting year. In cases where a WEC applicable facility has more than one owner or operator, the WEC obligated party shall be a person or entity selected by an agreement binding on each of the owners and operators involved in the transaction, following the provisions of § 99.4(b).

WEC obligation means the WEC charge amount resulting from the calculations in § 99.23.

You means a WEC obligated party subject to this part 99.

§ 99.3 Who must file?

WEC obligated parties, as defined in § 99.2, are required to submit a WEC filing and remit applicable WEC obligations and charges.

§ 99.4 How do I authorize and what are the responsibilities of the designated representative?

Each WEC obligated party must follow the procedures in paragraphs (a) through (l) of this section, as applicable, to identify a WEC obligated party designated representative. In cases where a WEC applicable facility has more than one owner or operator, the WEC obligated party shall be a person or entity selected by an agreement binding on each of the owners and operators involved in the transaction, following the provisions of paragraph (b) of this section. Failure to select a WEC obligated party for each WEC

applicable facility with multiple owners or operators following the procedures of paragraph (b) of this section is considered a violation of this part for each owner and operator (as defined in § 99.2 of this part) for the applicable industry segment of the associated WEC applicable facility.

(a) *General.* Except as provided under paragraph (f) of this section, each WEC obligated party that is subject to this part shall have one designated representative, who shall be responsible for certifying, signing, and submitting WEC filings or other submissions to the Administrator under this part.

(b) *Authorization of a designated representative.* The designated representative of each WEC obligated party shall be an individual selected by an agreement binding on the owner and operator of such entity and shall act in accordance with the certification statement in paragraph (i)(3)(iv) of this section. Failure of a WEC obligated party to authorize a designated representative following the procedures of this section is considered a violation of this part.

(c) *Responsibility of the designated representative.* Upon receipt by the Administrator of a complete certificate of representation under this section for the WEC obligated party, the designated representative identified in such certificate of representation shall represent and, by his or her representations, actions, inactions, or submissions, legally bind the owner and operator of such an entity in all matters pertaining to this part, notwithstanding any agreement between the designated representative and said owner and operator. The owner and operator shall be bound by any decision or order issued to the designated representative by the Administrator or a court.

(d) *Timing.* No WEC filing or other submissions under this part for a WEC obligated party will be accepted until the Administrator has received a complete certificate of representation under this section for a designated representative of the WEC obligated party. Such certificate of representation shall be submitted at least 60 days before the deadline for submission of the WEC obligated party's WEC filing under § 99.5.

(e) *Certification of the WEC filing.* Each WEC filing and any other submission under this part for a WEC obligated party shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the WEC obligated party in accordance with this section and § 3.10 of this chapter.

(1) Each such submission shall include the following certification statement signed by the designated representative or any alternate designated representative: ''I am authorized to make this submission on behalf of the owner and operator of the WEC obligated party, for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The Administrator will accept a WEC filing or other submission for a WEC obligated party under this part only if the submission is certified, signed, and submitted in accordance with this section.

(f) *Alternate designated representative.* A certificate of representation under this section for the WEC obligated party may designate one alternate designated representative, who shall be an individual selected by an agreement binding on the owner and operator, and may act on behalf of the WEC obligated party designated representative. The agreement by which the alternate designated representative is selected shall include a procedure for authorizing the alternate designated representative to act in lieu of the designated representative.

(1) Upon receipt by the Administrator of a complete certificate of representation under this section for a WEC obligated party identifying an alternate designated representative, the following apply.

(i) The alternate WEC obligated party designated representative may act on behalf of the WEC obligated party designated representative.

(ii) Any representation, action, inaction, or submission by the alternate designated representative shall be deemed to be a representation, action, inaction, or submission by the WEC obligated party designated representative.

(2) Except in this section, whenever the term ''designated representative'' is used in this part, the term shall be construed to include the designated representative or any alternate designated representative.

(g) *Changing a designated representative or alternate designated representative.* The designated representative or alternate designated representative identified in a complete certificate of representation under this section for a WEC obligated party received by the Administrator may be changed at any time upon receipt by the Administrator of another later signed, complete certificate of representation under this section for the WEC obligated party. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous designated representative or the previous alternate designated representative of the WEC obligated party before the time and date when the Administrator receives such later signed certificate of representation shall be binding on the new designated representative and the owner and operator of the WEC obligated party.

(h) *Changes in the WEC obligated party.* Within 90 days after any change in the WEC obligated party, the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section to reflect the change.

(i) *Certificate of representation.* A certificate of representation shall be complete if it includes the following elements in a format prescribed by the Administrator in accordance with this section:

(1) Identification of the WEC obligated party for which the certificate of representation is submitted.

(2) The name, organization name (company affiliation-employer), address, email address, telephone number, and facsimile transmission number (if any) of the designated representative and any alternate designated representative.

(3) The following certification statements by the designated representative and any alternate designated representative:

(i) ''I certify that I was selected as the designated representative or alternate designated representative, as applicable, by an agreement binding on the owner and operator of the entity.''

(ii) ''I certify that I have all the necessary authority to carry out my duties and responsibilities under 40 CFR part 99 on behalf of the owner and operator of the entity and that such owner and operator shall be fully bound by my representations, actions, inactions, or submissions.''

(iii) ''I certify that the owner and operator of the entity, as applicable, shall be bound by any order issued to me by the Administrator or a court regarding the entity.''

(iv) ''If there are multiple owners and operators of the entity, I certify that I have given a written notice of my selection as the 'designated representative' or 'alternate designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the entity.''

(4) The signature of the designated representative and any alternate designated representative and the dates signed.

(j) *Documents of agreement.* Unless otherwise required by the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the Administrator. The Administrator shall not be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(k) *Binding nature of the certificate of representation.* Once a complete certificate of representation under this section for a WEC obligated party has been received, the Administrator will rely on the certificate of representation unless and until a later signed, complete certificate of representation under this section for the facility is received by the Administrator.

(l) Objections concerning a designated representative.

(1) Except as provided in paragraph (g) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the designated representative or alternate designated representative shall affect any representation, action, inaction, or submission of the designated representative or alternate designated representative, or the finality of any decision or order by the Administrator under this part.

(2) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any designated representative or alternate designated representative.

§ 99.5 When must I file and remit the applicable WEC obligation?

Each WEC obligated party must submit their WEC filing including the information specified in § 99.7 and remit applicable WEC obligation no later than March 31 of the year following the reporting year. All filing revisions must be received according to the schedule in § 99.7(e) to be considered for revisions to WEC obligations. If the submission date falls on a weekend or a federal holiday, the submission date shall be extended to the next business day.

§ 99.6 How do I file?

Each WEC filing, certificate of representation, and remittance of applicable WEC fees for the WEC obligated party must be submitted electronically in accordance with the requirements of this part and in a format specified by the Administrator.

§ 99.7 What are the general reporting, recordkeeping, and verification requirements of this part?

The WEC obligated party that is subject to the requirements of this part must submit a WEC filing to the Administrator as specified in this section.

(a) *Schedule.* The WEC filing must be submitted in accordance with § 99.5.

(b) *Content of the WEC filing.* For each WEC obligated party, report the information in paragraphs (b)(1)(i) through (v) of this section. For each WEC applicable facility under common ownership or control of the WEC obligated party, report the information in paragraphs (b)(2)(i) through (vii) of this section. The WEC filing must also include payment of applicable WEC obligation, as specified in paragraph (b)(3) of this section.

(1) Reporting requirements at the WEC obligated party level.

(i) The company name.

(ii) The United States address for the company.

(iii) The name, address, email address, and phone number for the designated representative for the WEC obligated party.

(iv) The list of e-GGRT ID number(s) under which the WEC applicable facilities comprising the WEC obligated party as of December 31 of the reporting year report under part 98, subpart W of this chapter.

(v) The net WEC emissions, as calculated pursuant to § 99.22, and WEC obligation, as calculated pursuant to § 99.23, for the WEC obligated party.

(2) Reporting requirements for each WEC applicable facility comprising the WEC obligated party.

(i) The e-GGRT ID under which the WEC applicable facility emissions are reported under part 98, subpart W of this chapter.

(ii) The industry segment(s) for the WEC applicable facility.

(iii) For WEC applicable facilities in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment as defined in § 99.2, if conditions specified in § 99.30 regarding emissions from delays in permitting are met, provide information as specified in § 99.31.

(iv) If the conditions specified in § 99.40 are met regarding the regulatory compliance exemption, report whether the WEC applicable facility contains any affected facilities under part 60 of this chapter or any designated facilities under an applicable approved state, Tribal, Federal plan in part 62 of this chapter. If so, provide the information specified in § 99.41, as applicable.

(v) For WEC applicable facilities in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment as defined in § 99.2, if conditions specified in § 99.50 regarding emissions from permanently shut-in and plugged wells are met, you must report the information specified in § 99.51.

(vi) The facility waste emissions threshold as calculated pursuant to § 99.20, and, if there is more than one applicable industry segment within the WEC applicable facility, each industry segment waste emissions threshold for each applicable industry segment within the applicable facility, as calculated pursuant to § 99.20.

(vii) The facility applicable emissions, as calculated pursuant to § 99.21 and the WEC applicable emissions, as calculated pursuant to § 99.21.

(3) Payment of applicable WEC obligation, submitted in accordance with § 99.9.

(c) *Verification of the WEC filing.* To verify the completeness and accuracy of WEC filing, the EPA will consider the verification status of part 98 reports, and may review the certification statements described in § 99.4 and any other credible evidence, in conjunction with a comprehensive review of the WEC filing, including attachments. The EPA may conduct audits of selected WEC obligated parties and associated WEC applicable facilities. During such audits, the records generated under this part must be made available to the EPA. The on-site audits may be conducted by private auditors contracted by the EPA or by Federal, State or local personnel, as appropriate, and may be required to be arranged by and conducted at the expense of the WEC obligated party. Nothing in this section prohibits the EPA from using additional information, including reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, to verify the completeness and accuracy of the filings.

(d) *Recordkeeping.* Retain all required records for at least 5 years from the date of submission of the WEC filing for the reporting year in which the record was generated. The records shall be kept in an electronic or hard-copy format (as appropriate) and recorded in a form that is suitable for expeditious inspection and review. Upon request by the Administrator, the records required under this section must be made available to EPA. Records may be retained off site if the records are readily available for expeditious inspection and review. For records that are electronically generated or maintained, the equipment or software necessary to read the records shall be made available, or, if requested by EPA, electronic records shall be converted to paper documents. You must retain the following records:

(1) All information required to be retained by part 98, subparts A and W of this chapter.

(2) Any other information not included in a part 98 report used to complete the WEC filing.

(3) All information required to be submitted as part of the WEC filing.

(e) *Annual WEC filing revisions.* Except as specified in paragraph (e)(2) of this section, the provisions of this paragraph (e) apply until November 1 of the year following the reporting year, or for a given reporting year after the November 1 deadline if the resubmission is related to the resolution of unverified data process specified at § 99.8.

(1) The WEC obligated party shall submit a revised WEC filing within 45 days of discovering that a previously submitted WEC filing contains one or more substantive errors. The revised WEC filing must correct all substantive errors. If the resubmission is due to a correction in a part 98 report resubmitted by a WEC applicable facility, the WEC obligated party must report the number of corrections made in the part 98 report(s) and a description of how the changes impact the assessment of the WEC obligation.

(2) The revisions for substantive errors as described in paragraph (e)(2)(i) and (ii) are not subject to the November 1 deadline and must be submitted according the schedule therein.

(i) Revised filings for purposes of the regulatory compliance exemption must be submitted as follows:

(A) Revised filings to submit a CAA section 111(b) or (d) compliance report which covers the remaining portion of a WEC filing year, which were not available at the time of the WEC filing, must be submitted on or before the date that the compliance report covering the remainder of the year is due under the applicable requirements of CAA section 111(b) or (d), as applicable.

(B) Revised filings to submit findings by the WEC obligated party that one or more deviations or violations discovered after the WEC filing must be submitted within 45 days of the discovery.

(ii) The Administrator may notify the WEC obligated party in writing that a WEC filing previously submitted by the owner or operator contains one or more substantive errors. Such notification will identify each such substantive error. The WEC obligated party shall, within 45 days of receipt of the notification, either resubmit the WEC filing that, for each identified substantive error, corrects the identified substantive error (in accordance with the applicable requirements of this part) or provide information demonstrating that the previously submitted report does not contain the identified substantive error or that the identified error is not a substantive error. The EPA reserves to right to revise WEC obligations for a given reporting year after the November 1 final resubmission deadline if data errors are discovered by EPA at a later date.

(3) A substantive error is an error that impacts the Administrator's ability to accurately calculate a WEC obligated party's WEC obligation, which may include, but is not limited to, the list of WEC applicable facilities associated with a WEC obligated party, the emissions or throughput reported in the WEC applicable facility part 98 report(s), emissions associated with exemptions, and supporting information for each exemption to demonstrate its validity.

(4) Notwithstanding paragraphs (e)(1) and (2) of this section, upon request the Administrator may provide an extension of the 45-day period for submission of a revised report or information under paragraphs (e)(1) and (2) of this section if adequate justification is provided by the WEC obligated party. The Administrator may provide an extension of up to 30 days provided that the request is received by email to an address prescribed by the Administrator prior to the expiration of the 45-day period and that the request demonstrates that it is not practicable to submit a revised report or information under paragraphs (e)(1) and (2) of this section within 45 days.

(5) The WEC obligated party shall retain documentation for 5 years to support any revision made to a WEC filing.

(6) If a facility changes ownership such that there is a change to the WEC obligated party, the entity that was the WEC obligated party at the time of the original filing for a reporting year remains responsible for any revisions to WEC filings for that reporting year.

(f) *Designation of unverified filings and reports.* Following the verification process discussed in § 98.3(h) of this chapter for part 98 reports and paragraph (c) of this section for WEC filings, the EPA shall designate:

(1) The annual part 98 report associated with each WEC applicable facility as either verified or unverified. An unverified report is one in which the EPA has provided notification under § 98.3(h)(2) of this chapter and the owner or operator of the WEC applicable facility has failed to revise and resubmit the report and resolve the error or provide justification to the satisfaction of the EPA that the identified error is not a substantive error (in accordance with the applicable requirements of § 98.3(h)(3) of this chapter).

(2) The annual WEC filing from each WEC obligated party submitted pursuant to § 99.7 as either verified or unverified. An unverified filing is one in which the EPA has provided notification under § 99.7(e)(2) and the WEC obligated party designated representative has failed to resubmit the report and for each identified substantive error correct the identified substantive error (in accordance with the applicable requirements of paragraph (e)(3) of this section) or provide information demonstrating that the submitted report does not contain the identified substantive error or that the identified error is not a substantive error. The determination of verification status of a part 98 report under paragraph (f)(1) of this section will be taken into consideration in the determination of the verification status of a WEC filing.

§ 99.8 What are the general provisions for assessment of the WEC obligation?

(a) *Assessment of the WEC obligation.* WEC obligation assessments shall be made pursuant to § 99.23 on the basis of information submitted by the date specified in § 99.5 and following the submittal requirements of § 99.6.

(b) *Assessment of the WEC obligation for unverified filings.* If a WEC filing is unverified but the EPA is able to correct the error(s) based on reported data, the EPA will recalculate the WEC using available information and provide an invoice or refund to the WEC obligated party within 60 days of determining a WEC filing to be unverified. If the WEC obligated party resubmits a WEC filing within that timeframe, the EPA will

either verify the resubmission, or take the resubmission into account when calculating the WEC.

(c) *Third-party audits for unverified reports.* If the EPA is unable to calculate the WEC with available information, the EPA may require the WEC obligated party to undergo a third party audit. The EPA may require the WEC obligated party to fund and arrange the third-party audit. The third-party auditor must review records kept by the WEC obligated party, quantify the WEC with available information, and the updated WEC calculations and supporting data must be submitted to the EPA. The EPA will then take that information into consideration and calculate the WEC and provide an invoice or refund to the WEC obligated party.

(1) *Third party reviews.* An independent third-party audit of the information provided shall be based on a review of the relevant documents and shall identify each item required by the WEC filing, describe how the independent third-party evaluated the accuracy of the information provided, state whether the independent third-party agrees with the information provided, and identify any exceptions between the independent third-party's findings and the information provided.

(i) Audits required under this section must be conducted by a certified independent third-party. The auditor must have professional work experience in the petroleum engineering field or related to oil and gas production, gathering, processing, transmission or storage.

(ii) To be considered an independent third-party, the independent third party shall not be operated by the WEC obligated party and the independent third party shall be free from any interest in the WEC obligated party's business.

(iii) The independent third-party shall submit all records pertaining to the audit required under this section, including information supporting all of the requirements of § 99.8(c)(1) to the WEC obligated party.

(iv) The independent third-party must provide to the WEC obligated party documentation of qualifications of professional work experience in the petroleum engineering field or related to oil and gas production, gathering, processing, transmission or storage.

(2) *Reporting and recordkeeping requirements for WEC obligated parties following third party audits.*

(i) The WEC obligated party shall provide to EPA the results of the third-party audit, including the WEC obligation amount and all supporting documentation information that is included in reporting requirements under §§ 99.7, and 99.31, 99.41, and 99.51, as applicable.

(ii) The WEC obligated party shall provide to EPA documentation of qualifications of the third-party auditor.

(iii) The WEC obligated party shall retain all records pertaining to the audit required under this section for a period of 5 years from the date of creation and shall deliver such records to the Administrator upon request.

(d) *Resubmittal of filings and reports for the current or prior reporting year.* If resubmittal of a previously submitted part 98 report and/or WEC filing, submitted as specified in § 99.7(e), results in a change to the WEC obligation determined for a WEC obligated party for the reporting year the following process shall apply:

(1) If the WEC obligation based upon the resubmitted report or filing for the reporting year is less than the WEC obligation previously remitted by the WEC obligated party, the Administrator shall authorize a refund to the WEC obligated party equal to the difference in WEC obligation.

(2) If the WEC obligation based upon the resubmitted report or filing for the reporting year is greater than the WEC obligation previously remitted by the WEC obligated party, the Administrator shall issue an invoice to the WEC obligated party containing a charge in the amount determined using Equation A–1 of this section. Interest shall not be assessed for a change in WEC obligation resulting from the timely submittal of a regulatory report in accordance with § 99.41(c).

$$WEC_r = \Delta WEC \times \left(1 + \frac{i_{CVFR}}{365}\right)^t \qquad \text{(Eq. A-1)}$$

Where:

WEC_r = The charge obligation of the WEC obligated party to be resubmitted for the difference in WEC obligation, including any applicable interest, in dollars.

ΔWEC = The difference in WEC obligation, calculated as the amount remitted upon the original submittal specified in § 99.5 subtracted from the quantity of WEC obligation determined based upon the resubmitted report or filing, in dollars.

i_{CVFR} = The Treasury Current Value of Funds Rate as specified in § 99.10(b).

t = The number of days after the deadline specified in § 99.5 for remittance of WEC obligation for the reporting year that the resubmitted WEC filing or part 99 report was received by the Administrator, in days. For example, if a reporting year 2024 part 99 report is resubmitted on April 28, 2025, ''t'' is equal to 28 days. If a reporting year 2024 part 99 report is resubmitted on April 28, 2026, ''t'' is equal to 393 days.

365 = Conversion factor from years to days.

§ 99.9 How are payments required by this part made?

(a) The WEC obligation owed for each reporting year must be paid by the WEC obligated party as part of the annual WEC filling, as required by § 99.7(b), and is considered due at the date specified in § 99.5.

(b) Other than the WEC obligation specified in paragraph (a) of this section, all other charges required by this part, including adjusted WEC obligations, interest fees, and penalties, shall be paid by the WEC obligated party in response to an electronic invoice or bill by the specified due date, or within 30 days of the date of the invoice or bill if a due date is not provided.

(c) All WEC obligations, interest fees, and penalties required by this subpart shall be paid to the Department of the Treasury by the WEC obligated party electronically in U.S. dollars, using an online electronic payment service specified by the Administrator.

§ 99.10 What fees apply to delinquent payments?

(a) *Delinquency.* WEC obligated party accounts are delinquent if the WEC obligation payment is not submitted in full by the date required by § 99.5. WEC obligated party accounts are also delinquent if the accounts remain unpaid after the due date specified in the invoice or other notice of the WEC amount owed.

(b) *Interest fee.* In accordance with 31 U.S.C. 3717(a), delinquent WEC obligated party accounts shall be charged a minimum annual rate of interest equal to the average investment rate for Treasury tax and loan accounts (Current Value of Funds Rate or CVFR) most recently published and in effect by the Secretary of the Treasury.

(c) *Non-payment penalty.* In accordance with 31 U.S.C. 3717(e), WEC

obligated party accounts that are more than 90 days past due shall be charged an additional penalty of 6% per year assessed on any part of the debt that is past due for more than 90 days.

(d) *Penalty for non-submittal.* In accordance with 42 U.S.C. 7413(d)(1), a WEC obligated party that fails to submit an annual WEC filing by the date specified in § 99.5 may be charged an administrative penalty. The penalty assessment shall be a daily assessment per day that the WEC filing is not submitted, assessed up to the value specified in Table 1 of § 19.4, as amended, of this chapter. The assessment of penalty shall begin on the date that the WEC filing was considered past due per § 99.5 and continue until such time that the WEC filing is submitted by the WEC obligated party's designated representative.

§ 99.11 What are the compliance and enforcement provisions of this part?

Any violation of any requirement of this part shall be a violation of the Clean Air Act, including section 114 (42 U.S.C. 7414) and section 136 (42 U.S.C. 7436). A violation would include, but is not limited to, failure to submit a WEC filing, failure to collect data needed to calculate the WEC charge (including any data relevant to determining the applicability of any exemptions), failure to select a WEC obligated party, failure to retain records needed to verify the amount of WEC charge, providing false information in a WEC filing, and failure to remit WEC payment. Each day of a violation would constitute a separate violation. Each day of each violation constitutes a separate violation. Any penalty assessed shall be in addition to any WEC obligation due under this part and any fees applicable to delinquent payments due under § 99.10.

§ 99.12 What addresses apply for this part?

All requests, notifications, and communications to the Administrator pursuant to this part must be submitted electronically and in a format as specified by the Administrator.

§ 99.13 What are the confidentiality determinations and related procedures for this part?

This section characterizes various categories of information for purposes of making confidentiality determinations, as follows:

(a) This paragraph (a) applies the definition of ''Emission data'' in 40 CFR 2.301(a) for information reported under this part. ''Emission data'' cannot be treated as confidential business information and shall be available to be disclosed to the public. The following categories of information qualify as emission data:

(1) Methane emission information, including the net WEC emissions, waste emissions thresholds, WEC applicable emissions, and the quantity of methane emissions to be exempted due to unreasonable delay and wells that were permanently shut-in and abandoned.

(2) Calculation methodology, including the method used to determine the quantity of methane emissions to be exempted due to an unreasonable permitting delay and the method used to quantify emissions exempted from permanently shut-in and plugged wells.

(3) Facility and unit identifier information, including WEC obligated party company name and address, the name and contact information for the designated representative of WEC obligated party, signed and dated certification statements of the accuracy and completeness of the report, facility identifiers (*e.g.,* e-GGRT ID number), industry segment, well-pad and/or well identifiers, and emission source-specific methane mitigation activities impacted by an unreasonable permitting delay.

(b) The following types of information are not eligible for confidential treatment:

(1) The WEC obligation, as calculated pursuant to § 99.23.

(2) Compliance information, including information regarding applicable emissions standards or other relevant standards of performance or requirements, information in construction or operating permits, and information submitted to document compliance with an emissions standard or a standard of performance, such as a periodic report, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, (excluding any information redacted from the report and claimed as confidential).

(3) Published information that is publicly available, including information that is made available through publication of annual reports submitted under part 98 of this chapter, on company or other websites, or otherwise made publicly available.

(c) If you submit information that is not described in paragraphs (a) and (b) of this section, you may claim the information as confidential and the information is subject to the process for confidentiality determinations in 40 CFR part 2 as described in §§ 2.201 through 2.208. We may require you to provide us with information to substantiate your claims. If claimed, we may consider this substantiating information to be confidential to the same degree as the information for which you are requesting confidential treatment. We will make our determination based on your statements to us, the supporting information you send us, and any other available information. However, we may determine that your information is not subject to confidential treatment consistent with 40 CFR part 2 and 5 U.S.C. 552(b)(4).

(d) Submitted applications and reports typically rely on software or templates to identify specific categories of information. If you submit information in a comment field designated for users to add general information, we will respond to requests for disclosing that information consistent with paragraphs (a) through (c) of this section.

Subpart B—Determining Waste Emissions Charge

§ 99.20 How will the waste emissions threshold for each WEC applicable facility be determined?

The methane waste emissions threshold for each applicable industry segment within a WEC applicable facility for the reporting year will be calculated as described in paragraphs (a) through (d) of this section, as applicable. The methane waste emissions threshold for each WEC applicable facility will be determined as described in paragraph (e) of this section.

(a) For each offshore petroleum and natural gas production industry segment or onshore petroleum and natural gas production industry segment that sends natural gas to sale at a WEC applicable facility, the facility waste emissions threshold will be calculated using Equation B–1 of this section.

$$TH_{is,Prod} = 0.002 \times \rho_{CH_4} \times Q_{ng,Prod} \quad \text{(Eq. B-1)}$$

Where:

$TH_{is,Prod}$ = The methane waste emissions threshold for the industry segment at a WEC applicable facility for the reporting year in the production sector that has natural gas sent to sale, metric tons (mt) CH_4.

0.002 = Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for methane emissions for applicable facilities with natural gas sales in the production sector, thousand standard cubic feet (Mscf) CH_4 per Mscf of natural gas sent to sale.

ρ_{CH4} = Density of methane = 0.0192 kilograms per standard cubic foot (kg/scf) = 0.0192 metric tons per thousand standard cubic feet (mt/Mscf).

$Q_{ng,Prod}$ = The total quantity of natural gas that is sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to part 98, subpart W of this chapter. For onshore petroleum and natural gas production, you must use the quantity reported pursuant to proposed § 98.236(aa)(1)(i)(B) of this chapter, in Mscf. For offshore petroleum and natural gas production, you must use the quantity reported pursuant to proposed § 98.236(aa)(2)(i) of this chapter, in Mscf.

(b) For each offshore petroleum and natural gas production industry segment or the onshore petroleum and natural gas production industry segment that has no natural gas sent to sale at a WEC applicable facility, the facility waste emissions threshold will be calculated using Equation B–2 of this section.

$$TH_{is,Prod} = 10 \times Q_{o,Prod} \times 10^{-6} \quad \text{(Eq. B-2)}$$

Where:

$TH_{is,Prod}$ = The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the production sector that has no natural gas sent to sale, mt CH_4.

10 = Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities with no natural gas sales in the production sector, mt CH_4 per million barrels oil sent to sale.

$Q_{o,Prod}$ = The total quantity of crude oil that is sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to part 98, subpart W of this chapter. For onshore petroleum and natural gas production, you must use the quantity reported pursuant to proposed § 98.236(aa)(1)(i)(C) of this chapter, in barrels. For offshore petroleum and natural gas production, you must use the quantity reported pursuant to proposed § 98.236(aa)(2)(ii) of this chapter, in barrels.

10^{-6} = Conversion from barrels to million barrels.

(c) For each onshore natural gas processing industry segment, liquefied natural gas storage industry segment, the liquefied natural gas import and export equipment industry segment, or the onshore petroleum and natural gas gathering and boosting industry segment at a WEC applicable facility, the facility waste emissions threshold will be calculated using Equation B–3 of this section.

$$TH_{is,NonProd} = 0.0005 \times \rho_{CH_4} \times Q_{ng,NonProd} \quad \text{(Eq. B-3)}$$

Where:

$TH_{is,NonProd}$ = The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the nonproduction sector, mt CH_4.

0.0005 = Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities in the nonproduction sector, Mscf CH_4 per Mscf of natural gas sent to sale from or through the facility.

ρ_{CH4} = Density of methane = 0.0192 kg/scf = 0.0192 mt/Mscf.

$Q_{ng,NonProd}$ = The total quantity of natural gas that is sent to sale from or through the industry segment at a WEC applicable facility in the reporting year as reported pursuant to part 98, subpart W of this chapter. For RY 2024 for onshore natural gas processing, you must use the quantity reported pursuant to § 98.236(aa)(3)(ii) of this chapter, in Mscf and for RY 2025 and later, you must use the quantity reported pursuant to proposed § 98.236(aa)(3)(ix) of this chapter, in Mscf. For LNG import and export, you must use sum of the quantities reported pursuant to § 98.236(aa)(6) and (7) of this chapter, in Mscf. For LNG storage, you must use the quantity reported pursuant to § 98.236(aa)(8)(ii) of this chapter, in Mscf. For onshore petroleum and natural gas gathering and boosting, you must use the quantity reported pursuant to § 98.236(aa)(10)(ii) of this chapter, in Mscf.

(d) For each onshore natural gas transmission compression industry segment, underground natural gas storage industry segment, or onshore natural gas transmission pipeline industry segment at a WEC applicable facility, the facility waste emissions threshold will be calculated using Equation B–4 of this section.

$$TH_{is,Tran} = 0.0011 \times \rho_{CH_4} \times Q_{ng,Tran} \quad \text{(Eq. B-4)}$$

Where:

$TH_{is,Tran}$ = The annual methane waste emissions threshold for the industry segment at a WEC applicable facility in the transmission sector, mt CH_4.

0.0005 = Industry segment-specific methane intensity threshold, as specified in CAA section 136(f), for applicable facilities in the transmission sector, Mscf CH_4 per Mscf of natural gas sent to sale from or through the facility.

ρ_{CH4} = Density of methane = 0.0192 kg/scf = 0.0192 mt/Mscf.

$Q_{ng,Tran}$ = The total quantity of natural gas that is sent to sale from or through the industry segment at a WEC applicable facility in the reporting year as reported pursuant to part 98, subpart W of this chapter. For onshore natural gas transmission compression, you must use the quantity reported pursuant to § 98.236(aa)(4)(i) of this chapter, in Mscf. For underground natural gas storage, you must use the quantity reported pursuant to § 98.236(aa)(5)(ii) of this chapter, in Mscf. For onshore natural gas transmission pipeline, you must use the quantity reported pursuant to § 98.236(aa)(11)(iv) of this chapter, in Mscf.

(e) For each WEC applicable facility that operates in a single industry segment, the methane waste emissions threshold shall be equal to the value calculated in Equation B–1, Equation B–2, Equation B–3, or Equation B–4 of this section, as applicable. For each WEC applicable facility that operates in two or more industry segments, the facility waste emissions threshold will be

calculated using Equation B–5 of this section.

$$TH_{WAF} = \sum_{s=1}^{N} TH_{is,s} \quad \text{(Eq. B-5)}$$

Where:

TH_{WAF} = The WEC applicable facility waste emissions threshold, mt CH_4.

$TH_{is,s}$ = The industry segment waste emissions threshold, as calculated in Equation B–3 or Equation B–4 of this section, for each industry segment ''s'' at the WEC applicable facility, mt CH_4.

N = Number of industry segments at the WEC applicable facility.

§ 99.21 How will the WEC applicable emissions for a WEC applicable facility be determined?

(a) The total facility applicable emissions for each WEC applicable facility will be calculated using Equation B–6 of this section.

$$E_{TFA,CH_4} = E_{SubpartW,CH_4} - TH_{WAF} \quad \text{(Eq. B-6)}$$

Where:

$E_{TFA,CH4}$ = The annual methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions (*i.e.,* total facility applicable emissions), mt CH_4.

$E_{SubpartW,CH4}$ = The annual methane emissions for a WEC applicable facility, as reported under part 98, subpart W of this chapter for the corresponding reporting year, mt CH_4.

TH_{WAF} = The waste emissions threshold for a WEC applicable facility, as determined in § 99.20(e), mt CH_4.

(b) If the total facility applicable emissions calculated using Equation B–6 of this section are less than or equal to 0 mt, then the WEC applicable emissions are equal to the total facility applicable emissions.

(c) If the total facility applicable emissions calculated using Equation B–6 of this section are greater than 0 mt and the regulatory compliance exemption as specified in § 99.40 applies to the WEC applicable facility, the WEC applicable emissions for that facility are equal to 0 mt.

(d) If the total facility applicable emissions calculated using Equation B–6 of this section are greater than 0 mt and the regulatory compliance exemption as specified in § 99.40 does not apply to the WEC applicable facility, the WEC applicable emissions for each WEC applicable facility will be calculated using Equation B–7 of this section.

$$E_{WA,CH_4} = E_{TFA,CH_4} - E_{Delay,CH_4} - E_{Plug,CH_4} \quad \text{(Eq. B-7)}$$

Where:

$E_{WA,CH4}$ = The annual methane emissions associated with a WEC applicable facility that are either equal to, below, or exceeding the waste emissions threshold for the WEC applicable facility (*i.e.,* the WEC applicable emissions), mt CH_4. If the result of this calculation is less than 0 mt CH_4, the WEC appliable emissions for the facility are equal to 0 mt CH_4.

$E_{TFA,CH4}$ = The annual methane emissions equal to, below, or exceeding the waste emissions threshold for a WEC applicable facility prior to consideration of any applicable exemptions for the reporting year, mt CH_4.

$E_{Delay,CH4}$ = The quantity of methane emissions exempted, as determined in Equation C–1 of § 99.32, at the WEC applicable facility in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment due to an unreasonable delay in environmental permitting of gathering or transmission infrastructure, mt CH_4.

$E_{Plug,CH4}$ = The total quantity of annual methane emissions, as determined in Equation E–5 of § 99.52, at the WEC applicable facility in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments, attributable to all wells that were permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements, mt CH_4.

§ 99.22 How will the net WEC emissions for a WEC obligated party be determined?

Net WEC emissions for a WEC obligated party, equal to the sum of WEC applicable emissions from all facilities with the same WEC obligated party, as specified in 99.2, will be calculated using Equation B–8 of this section.

$$E_{NetWEC,CH_4} = \sum_{j=1}^{N} E_{WA,CH_4} \quad \text{(Eq. B-8)}$$

Where:

$E_{NetWEC,CH4}$ = The annual methane emissions subject to the WEC for the WEC obligated party for the reporting year, mt CH_4.

$E_{WA,CH4}$ = The annual methane emissions equal to, below, or exceeding the waste emissions thresholds for a WEC applicable facility ''j'' as calculated in § 99.21(b) or (d) under common ownership or control of a WEC obligated party, mt CH_4.

N = Total number of WEC applicable facilities under common ownership or control of a WEC obligated party, excluding any WEC applicable facilities for which the regulatory compliance exemption as specified in § 99.40 applies.

§ 99.23 How will the WEC Obligation for a WEC obligated party be determined?

(a) If the net WEC emissions for a WEC obligated party as determined in § 99.22 are less than or equal to zero, the WEC obligated party's WEC obligation is zero and the WEC obligated party is not subject to a waste emissions charge in the reporting year.

(b) If the net WEC emissions for a WEC obligated party as determined in § 99.22 are greater than zero, the WEC obligation will be calculated according to the applicable provisions in paragraphs (b)(1) through (3) of this section.

(1) For reporting year 2024, multiply the net WEC emissions from Equation B–8 of this subpart by $900 per mt CH_4 to determine the WEC obligation.

(2) For reporting year 2025, multiply the net WEC emissions from Equation B–8 of this subpart by $1,200 per mt CH_4 to determine the WEC obligation.

(3) For reporting year 2026 and each year thereafter, multiply the net WEC emissions from Equation B–8 of this subpart by $1,500 per mt CH_4 to determine the WEC obligation.

Subpart C—Unreasonable Delay Exemption

§ 99.30 Which facilities qualify for the exemption for emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?

(a) The WEC applicable facility must be in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment as defined in § 99.2.

(b) The total facility applicable emissions for the WEC applicable facility as calculated in accordance with § 99.21(a) must exceed 0 mt.

(c) All requests for information regarding the permit received by either the production entity potentially eligible for the exemption or the entity seeking the environmental permit must not have exceeded the response time requested by the permitting agency, or by the relevant production or gathering or transmission infrastructure entity seeking the permit, or exceeded 30 days if no specific response time is requested.

(d) The WEC facility must report flaring emissions in the reporting year that occurred as a result of a delay in environmental permitting of gathering or transmission infrastructure, and are in compliance with all applicable local, state and federal regulations regarding flaring emissions.

(e) [A set period of months (with exact timing to be specified at final)] must have passed since submission of a complete environmental permit application, as certified by the relevant permitting authority, to construct gathering or transmission infrastructure without approval or denial of the environmental permit application.

§ 99.31 What are the reporting requirements for the exemption for emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?

(a) Upon meeting all criteria in § 99.30(a) through (f), you shall report information regarding an exemption for unreasonable delay in permitting of gathering or transmission infrastructure for a given reporting year. The unreasonable delay exemption information to be reported is described in paragraph (b) of this section. The unreasonable delay exemption shall be submitted as described in paragraph (c) of this section.

(b) For each unreasonable delay exemption, the WEC obligated party must report the information specified in paragraphs (b)(1) through (10) of this section.

(1) The company name and name of the facility that submitted the permit application to construct and/or operate gathering or transmission infrastructure.

(2) The name and e-GGRT ID number under part 98, subpart W of this chapter of the production facility impacted by the unreasonable delay in environmental permitting of gathering or transmission infrastructure.

(3) The date of the initial permit request to build gathering or transmission infrastructure.

(4) An attestation that the entity seeking the permit has been responsive to the relevant authority regarding the permit application, that is that the entity has responded to all requests from the permitting authority within the time frame requested by the relevant authority or within 30 days if no timeframe is specified.

(5) For each well-pad impacted by the unreasonable delay in permitting of gathering or transmission infrastructure:

(i) The well-pad ID for each well-pad, as reported under part 98, subpart W of this chapter.

(ii) A listing of methane emissions mitigation activities that are impacted by the unreasonable permitting delay.

(6) The estimated date to commence operation of the gathering or transmission infrastructure if application had been approved before [the set period of months elapsed (exact timing to be specified at final)].

(7) If the application has been approved and operations commenced during the reporting year, the first date that offtake to the gathering or transmission infrastructure from the implementation of methane emissions mitigation occurred.

(8) The beginning and ending date for which the eligible delay limited the offtake of Nnatural gas associated with methane emissions mitigation activities for the reporting year as determined according to § 99.32(a).

(9) The quantity of methane emissions to be exempted due to the unreasonable delay for the reporting year calculated as specified in § 99.32 and the method used to determine the quantity of methane emissions to be exempted (used § 99.32(b)(1); used § 99.32(b)(2)(i); used § 99.32(b)(2)(ii) with K_f based on volume; used § 99.32(b)(2)(ii) with K_f based on time).

(10) Information on all applicable local, state, and federal regulations regarding flaring emissions and the facility's compliance status for each.

(11) For each permit relevant to the exemption, the name/type of permit, permitting agency, and a link to information on the permit (*e.g.,* available through the permitting agency), if available.

(c) Each submittal under this section shall be certified, signed, and submitted by the designated representative or any alternate designated representative of the WEC obligated party in accordance with this section and § 3.10 of this chapter.

§ 99.32 How are the methane emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure quantified?

(a) Determine the time period associated with the emissions that occurred as a result of the eligible delay within the reporting year as specified in paragraphs (a)(1) and (2) of this section.

(1) The start date of the emissions caused by the delay in the reporting year is the latter of January 1 of the reporting year, or the date on which emissions would have been avoided through commencement of the operation of the gathering or transmission infrastructure if the application to construct and/or operate the gathering or transmission infrastructure had been approved within a set period of months as specified in § 99.31(b)(6).

(2) The end time of the emissions caused by the delay in the reporting year is the earlier of December 31 of the reporting year or the date the emissions caused by the unreasonable delay ends because the infrastructure commenced operation.

(b) For each well-pad or offshore platform at a WEC applicable facility

impacted by an unreasonable delay in environmental permitting of gathering or transmission infrastructure, you must calculate the emissions that occurred at the well-pad or offshore platform that were caused by the unreasonable delay according to paragraph (b)(1) or (2) of this section, as applicable.

(1) If the unreasonable delay impacts the entire reporting year, and has resulted in the entire volume of flaring occurring from flare stacks, associated gas flaring, or offshore production flaring, then use the mass CH_4 emissions, in mt CH_4, as reported in § 98.236(m)(8)(iii), (n)(10), and/or (s)(2) of this chapter, as applicable, for the individual flare(s) in the offshore petroleum and natural gas production industry segment and onshore petroleum gas production industry segment used to flare the increased volume of gas from methane emissions mitigation implementation associated with the unreasonable delay in environmental permitting of gathering or transmission infrastructure. If multiple flares are used to flare the increased volume of gas, sum the mass CH_4 emissions for each flare used to flare the increased volume of gas from methane emissions mitigation implementation to determine the cumulative emissions associated with the permitting delay.

(2) If the unreasonable delay impacts only a portion of the reporting year or only a portion of the flaring emissions, determine the eligible emissions as specified in paragraph (b)(2)(i) or (ii) of this section, as applicable.

(i) If you have records to calculate the mass CH_4 emissions from the flare(s) used to flare the increased volume of gas from methane emissions mitigation implementation associated with the unreasonable delay in environmental permitting of gathering or transmission according to the applicable methods in subpart W of this chapter for the specific time period eligible for the exemption, you must calculate the methane emissions for the specific time period eligible for the exemption from each flare used to flare the increased volume of gas from methane emissions mitigation implementation associated with the unreasonable delay. If multiple flares are used to flare the increased volume of gas, sum the mass CH_4 emissions for each flare calculated according to this paragraph to determine the cumulative emissions associated with the permitting delay.

(ii) If you do not have records to calculate the mass CH_4 emissions for the exemption period according to paragraph (b)(2)(i) of this section, then calculate the emissions that occurred at the offshore facility or onshore well-pad caused by the unreasonable delay using Equation C–1 of this section.

$$E_{Delay,CH_4} = E_{MMFlare,CH_4} \times K_f \times X_f \quad \text{(Eq. C-1)}$$

Where:

$E_{Delay,CH4}$ = Annual CH_4 emissions associated with delay in permitting in the reporting year, mt CH_4.

$E_{MMFlare,CH4}$ = Annual CH_4 emissions from the flare(s) used to flare increased volume of gas from methane emissions mitigation implementation reported in subpart W of this chapter, mt CH_4.

K_f = Eligible timeframe adjustment factor to the CH_4 emissions flaring emissions for partial year exemption period. If you have records of the volume of gas flared from the impacted flare(s) during the exemption period, use the ratio of the volume of gas flared during the exemption period to the total annual volume of gas flared from the impacted flare(s) to determine K_f; otherwise, use the ratio of hours in the exemption period to the total annual hours in the reporting year (8760 or, for leap years, 8784) to determine K_f.

X_f = Fraction of the flared emissions reported in subpart W of this chapter that occurred from the flare(s) due to the unreasonable delay. This fraction can be estimated based on company records of flare emissions prior to the unreasonable delay or through engineering calculations of flare volumes related to other sources vented to the flare(s).

§ 99.33 What are the recordkeeping requirements for methane emissions caused by an unreasonable delay in environmental permitting of gathering or transmission infrastructure?

(a) For each communication the entity seeking the permit has had with the permitting authority regarding the permit application:

(1) The date and type of communication.

(2) The date of the facility's response to the communication.

(3) Information on whether the facility's response included modification to the permit application.

(b) Records of values used in the calculation of the emissions that occurred at the well-pad caused by the unreasonable delay.

Subpart D—Regulatory Compliance Exemption

§ 99.40 When does the regulatory compliance exemption come into effect, and under what conditions does the exemption cease to be in effect?

(a) The requirements of this subpart only apply to a WEC applicable facility when the total facility applicable emissions for that WEC applicable facility as calculated in accordance with § 99.21(a) exceed 0 mt CH_4.

(b) The requirements of § 99.41 shall only be in effect when each of the following conditions are met:

(1) A determination has been made by the Administrator that methane emissions standards and plans pursuant to subsections (b) and (d) of section 111 of the Act have been approved and are in effect in all States with respect to the applicable facilities; and

(2) A determination has been made by the Administrator that the emissions reductions achieved by compliance with the requirements described in paragraph (b)(1) of this section will result in equivalent or greater emissions reductions on a nationwide basis as would be achieved by the proposed rule of the Administrator entitled 'Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review' (86 FR 63110; November 15, 2021), if such rule had been finalized and implemented.

(c) At such time that the conditions specified in paragraphs (b)(1) and (2) of this section are met, the reporting requirements of § 99.41 shall come into effect beginning with the WEC filing due on the date specified in § 99.5 in the calendar year following the calendar year in which the conditions were met. Imposition of the waste emission charge shall not be made on an applicable facility meeting the requirements for regulatory compliance exemption for methane emissions that occurred during the calendar year during which the conditions are met.

(d) If any of the conditions in paragraph (b)(1) or (2) of this section cease to apply after the Administrator has made the determinations in paragraph (b)(1) and (2) of this section, the reporting requirements of § 99.41 shall cease to be in effect beginning with the WEC filing due on the date specified in § 99.5 in the calendar year during which either of the conditions were no longer met.

§ 99.41 Which facilities qualify for the exemption for regulatory compliance?

(a) The total facility applicable emissions for the WEC applicable facility as calculated in accordance with § 99.21(a) or (d) must exceed 0 mt.

(b) The WEC applicable facility must contain one or more affected facilities or one or more designated facilities.

(c) At the WEC applicable facility, all affected facilities and all designated facilities located at this WEC applicable facility, must have no deviations or violations with the methane emissions requirements of part 60 of this chapter and the methane emissions requirements requirements of an applicable approved state, Tribal, or Federal plan in part 62 of this chapter, including all applicable emission standard, work practice, monitoring, reporting, and recordkeeping requirements.

§ 99.42 What are the reporting requirements for the exemption for regulatory compliance?

(a) A facility eligible for the regulatory compliance exemption that meets the criteria described in § 99.41 shall include information as described in paragraph (b) of this section. A facility that meets the criteria described in § 99.41(a) and (b) but is not eligible for the exemption because it does not meet the criteria in § 99.41(c) shall include information as described in paragraph (d) of this section. The regulatory compliance exemption information shall be submitted as described in § 99.7.

(b) A facility meeting the criteria in § 99.41 must report all of the information specified in paragraphs (b) of this section, as applicable.

(1) For each WEC applicable facility, an assertion that the facility meets all of the eligibility criteria in § 99.41.

(2) The ICIS–AIR ID (or Facility Registry Service (FRS) ID if the ICIS–AIR ID is not available) and EPA Registry ID from CEDRI associated with each affected facility and designated facility located at the WEC applicable facility.

(3) If a report, or reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, cover the complete reporting year *(i.e.,* January 1 through December 31, inclusive), then submit as attachment(s) the applicable report(s).

(4) If a report, or reports, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, does not cover the complete reporting year (*i.e.,* January 1 through December 31, inclusive), then submit as attachment(s) the applicable report(s).

(c) If, pursuant to paragraph (b)(4) of this section, you are unable to provide an annual report covering the entire reporting year at the time of the initial submittal specified in § 99.5, you must provide a revised WEC filing on or before such time that an annual report covering the entire reporting year is required to be submitted under the applicable requirements of part 60 of this chapter or an applicable approved state, Tribal, or Federal plan in part 62 of this chapter. This requirement also applies in the case where the initial WEC filing contains an annual report covering only a portion of the reporting year. On or before such time that an annual report is due under the applicable requirements of part 60 of this chapter or an applicable approved state, Tribal, or Federal plan in part 62 of this chapter for the portion of the reporting year for which a previously submitted report does not cover, you must provide a revised WEC filing including the subsequent annual report. The resubmission of the revised WEC filing shall be considered timely under this paragraph if it is made on or before the date that the annual report is due under the applicable requirements of part 60 of this chapter or an applicable approved state, Tribal, or Federal plan in part 62 of this chapter. In such cases where a newly available report indicates one or more deviations or violations from applicable methane emissions requirements that were not previously indicated in the WEC filing for the reporting year (*i.e.,* the WEC applicable facility would no longer qualify for the regulatory compliance exemption), a WEC applicable facility would no longer be subject the reporting requirements in § 99.42(b) and would become subject to the reporting requirements in § 99.42(d) in the revised WEC filing.

(d) If least one of the affected facilities subject to the requirements of part 60 of this chapter or designated facilities subject to the requirements of an applicable approved state, Tribal, or Federal plan in part 62 of this chapter that is contained within your WEC applicable facility has a deviation or violation from its applicable methane emissions requirements (*i.e.,* does not meet the criteria in § 99.41(c)), provide a copy of one report, prepared and submitted in accordance with part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, that demonstrates that the affected facility or designated facility were not in compliance.

(e) A WEC applicable facility's eligibility for the regulatory compliance exemption pursuant to this subpart does not constitute a determination of compliance for part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, for any affected facility or designated facility present at the applicable facility.

(f) A WEC applicable facility's eligibility for the regulatory compliance exemption during a given reporting year does not preclude reassessment of applicable waste emissions charges for that applicable facility upon discovery by the Administrator or a delegated authority of any violation of the methane emissions requirements pursuant to part 60 of this chapter, or an applicable approved state, Tribal, or Federal plan under part 62 of this chapter that implements the emission guidelines contained in part 60 of this chapter, for the affected facilities or designated facilities present at the applicable facility.

Subpart E—Exemption for Permanently Shut-in and Plugged Wells

§ 99.50 Which facilities qualify for the exemption of emissions from permanently shut-in and plugged wells?

(a) The total facility applicable emissions for the WEC applicable facility containing permanently shut-in and plugged wells must exceed 0 mt as calculated in accordance with § 99.21(a).

(b) This exemption is applicable to WEC applicable facilities in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment as defined in § 99.2 that permanently shut-in and plugged well(s) during the reporting year. For the purposes of applying this exemption, a permanently shut-in and plugged well is one that has been permanently sealed, following all applicable local, state, or federal regulations in the jurisdiction where the well is located, to prevent any potential future leakage of oil, gas, or formation water into shallow sources of potable water, onto the surface, or into the atmosphere. Site reclamation following placement of a metal plate or cap is not required to be completed for the well to

be considered permanently shut-in and plugged for the purposes of this part.

§ 99.51 What are the reporting requirements for the exemption for wells that were permanently shut-in and plugged?

(a) Report the following information for each well at a WEC applicable facility, in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment, that was permanently shut-in and plugged in the reporting year.

(1) Well identification (ID) number as reported in part 98, subpart W of this chapter.

(2) Date the well was permanently shut-in and plugged, which for the purposes of this exemption, is the date when welding or cementing of a metal plate or cap onto the casing end was completed.

(3) The statutory citation for each applicable state, local, and federal regulation stipulating requirements that were applicable to the closure of the permanently shut-in and plugged well.

(4) The equation used to calculate equipment leak emissions attributable to the well (*i.e.,* Equation E–2A or E–2B of this subpart).

(5) The emissions attributable to the well calculated using Equation E–1, E–3, or E–4 of this subpart, as applicable.

(b) The total quantity of methane emissions attributable to all wells that were permanently shut-in and plugged at a WEC applicable facility, in the offshore petroleum and natural gas production or onshore petroleum and natural gas production industry segment, during the reporting year, calculated using Equation E–5 of this subpart.

§ 99.52 How are the net emissions attributable to all wells at a WEC applicable facility that were permanently shut-in and plugged in the reporting year quantified?

(a) For the purposes of this section, the following source types (as specified in part 98, subpart W of this chapter) constitute emissions directly attributable to an offshore petroleum and natural gas production or onshore petroleum and natural gas production well:

(1) Wellhead equipment leaks.

(2) Liquids unloading.

(3) Workovers with hydraulic fracturing.

(4) Workovers without hydraulic fracturing.

(b) Calculate the annual emissions attributable to each well that was permanently shut-in and plugged during the reporting year and included in the submittal pursuant to § 99.51 using Equations E–1, E–3 or E–4 of this section, as applicable.

(1) For onshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in reporting years 2025 and later:

(i) Equation E–1 of this section must be used to quantify the methane emissions directly attributable to each permanently shut-in and plugged well.

$$E_{PW,CH_4} = E_{Leaks,CH_4} + E_{LU,CH_4} + E_{WwHF,CH_4} + E_{WwoHF,CH_4} \quad \text{(Eq. E-1)}$$

Where:

$E_{PW,CH4}$ = The annual quantity of methane emissions directly attributable to an individual well that was permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility, mt CH_4.

$E_{Leaks,CH4}$ = The annual quantity of methane emissions attributable to the well from wellhead equipment leaks as calculated using Equation E–2A or E–2B of this section, as applicable, for the reporting year, mt CH_4.

$E_{LU,CH4}$ = The annual quantity of methane emissions attributable to the well from liquids unloading as reported pursuant to proposed § 98.236(f)(1)(x) or (f)(2)(viii) of this chapter, as applicable, for the reporting year, mt CH_4.

$E_{WwHF,CH4}$ = The quantity of methane emissions attributable to the well from workovers with hydraulic fracturing as reported pursuant to proposed § 98.236(g)(9) of this chapter for the reporting year, mt CH_4.

$E_{WwoHF,CH4}$ = The quantity of methane emissions attributable to the well from workovers without hydraulic fracturing and without flaring as reported pursuant to proposed § 98.236(h)(3)(iv) of this chapter for the reporting year, mt CH_4.

(ii) If equipment leak surveys were used to quantify methane emissions from the permanently shut-in and plugged well and reported pursuant to § 98.236(q) of this chapter in the part 98 report for a WEC applicable facility, Equation E–2A of this section must be used to calculate $E_{Leaks,CH4}$.

$$E_{Leaks,CH_4} = \sum_{p=1}^{N_p} \left(EF_p \times \sum_{z=1}^{x_p} T_{p,z} \right) \times M_{CH_4} \times k \times \rho_{CH_4} \times 10^{-3} \quad \text{(Eq. E-2A)}$$

Where:

$E_{Leaks,CH4}$ = The annual quantity of methane emissions attributable to the well from wellhead equipment leaks as reported pursuant to § 98.236(q) of this chapter for the reporting year, mt CH_4.

p = Component type as specified in proposed § 98.233(q)(2)(iii) of this chapter.

N_p = The number of component types with detected leaks at the well.

EF_p = The leaker emission factor for component ''p'' as specified in proposed § 98.233(q)(2)(iii) of this chapter, scf whole gas/hour/component.

M_{CH4} = The mole fraction of CH_4 in produced gas for the sub-basin associated with the well, as reported pursuant to proposed § 98.236(aa)(1)(ii)(I), unitless.

x_p = The total number of specific components of type ''p'' detected as leaking at the permanently shut-in and plugged well in any leak survey during the year. A component found leaking in two or more surveys during the year is counted as one leaking component.

$T_{p,z}$ = The total time the surveyed component ''z'' of component type ''p'' was assumed to be leaking. If one leak detection survey is conducted in the calendar year, assume the component was leaking from the beginning of the reporting year until the date the well was plugged in accordance with § 99.51(a)(2), hours; assume a component found leaking in the last survey of the year was leaking from the preceding survey through the date the well was plugged in accordance with § 99.51(a)(2), hours; assume a component found leaking in a survey between the first and last surveys of the year was leaking since the preceding survey until the date the well was

plugged in accordance with § 99.51(a)(2), hours; and sum times for all leaking periods. For each leaking component, account for time the component was not operational (*i.e.,* not operating under pressure) using an engineering estimate based on best available data.

k = The factor to adjust for undetected leaks by respective leak detection method, where k equals 1.25 for the methods in proposed § 98.234 (a)(1), (3) and (5) of this chapter; k equals 1.55 for the method in proposed § 98.234(a)(2)(i) of this chapter; and k equals 1.27 for the method in proposed § 98.234(a)(2)(ii) of this chapter. Select the factor for the leak detection method used for the permanently shut-in and plugged well, unitless.

ρ_{CH4} = Density of methane, 0.0192 mt/Mscf.

10^{-3} = Conversion factor from scf to Mscf.

(iii) If equipment leaks by population count were used to quantify methane emission from the permanently shut-in and plugged well and reported pursuant to § 98.236(r) of this chapter in the part 98 report for a WEC applicable facility, Equation E–2B of this section must be used to calculate $E_{Leaks,CH4}$.

$$E_{Leaks,CH_4} = EF_{wh} \times M_{CH_4} \times T \times \rho_{CH_4} \times 10^{-3} \quad \text{(Eq. E-2B)}$$

Where:

$E_{Leaks,CH4}$ = The annual quantity of methane emissions attributable to the well from wellhead equipment leaks as reported pursuant to § 98.236(r) of this chapter for the reporting year, mt CH_4.

EF_{wh} = The population emission factor for wellheads, as listed in proposed Table W–1 of subpart W of part 98 of this chapter, scf whole gas/hour/wellhead.

M_{CH4} = The mole fraction of CH_4 in produced gas for the sub-basin associated with the well as reported pursuant to proposed § 98.236(aa)(1)(ii)(I) of this chapter, unitless.

T = The total time that has elapsed from the beginning of the reporting year until the date the well was plugged in accordance with § 99.51(a)(2), hours.

P_{CH4} = Density of methane, 0.0192 mt/Mscf.

10^{-3} = Conversion factor from scf to Mscf.

(2) For onshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in reporting year 2024, Equation E–3 of this section must be used to quantify the methane emissions attributable to the well:

$$E_{PW,CH_4} = \left(E_{LkQ,CH_4} + E_{LkR,CH_4} + E_{LU,CH_4} + E_{Ww,HF,CH_4} + E_{WwoHF,CH_4}\right) \times \frac{\left(\frac{Q_{ng,PW}}{6}\right) + Q_{oil,PW} + Q_{cond,PW}}{\left(\frac{Q_{ng,WAF}}{6}\right) + Q_{oil,WAF} + Q_{cond,WAF}} \quad \text{(Eq. E-3)}$$

Where:

$E_{PW,CH4}$ = The annual quantity of methane emissions attributable to an individual well that was permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility, mt CH_4.

E_{LkQ} = The WEC applicable facility total annual quantity of methane emissions from equipment leaks reported pursuant to proposed § 98.236(q)(2)(ix) of this chapter for the reporting year, mt CH_4.

E_{LkR} = The WEC applicable facility total annual quantity of methane emissions from equipment leaks reported pursuant to proposed § 98.236(r)(1)(vi) of this chapter for the reporting year, mt CH_4.

E_{LU} = The WEC applicable facility total annual quantity of methane emissions from liquids unloading as reported pursuant to proposed §§ 98.236(f)(1)(x) and (f)(2)(viii) of this chapter for the reporting year, mt CH_4.

E_{WwHF} = The WEC applicable facility total annual quantity of methane emissions from workovers with hydraulic fracturing as reported pursuant to proposed § 98.236(g)(9) of this chapter for the reporting year, mt CH_4.

E_{WwoHF} = The WEC applicable facility total annual quantity of methane emissions from workovers without hydraulic fracturing as reported pursuant to proposed § 98.236(h)(3)(iv) of this chapter for the reporting year, mt CH_4.

$Q_{ng,PW}$ = The total annual quantity of natural gas that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(iii)(C) of this chapter, in thousand standard cubic feet.

6 = Conversion factor from thousand standard cubic feet of natural gas to barrel of oil equivalent.

$Q_{oil,PW}$ = The total quantity of crude oil that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(iii)(D) of this chapter, in barrels.

$Q_{cond,PW}$ = The total quantity of condensate that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(iii)(E) of this chapter, in barrels.

$Q_{ng,WAF}$ = The total quantity of natural gas that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(i)(B) of this chapter, in thousand standard cubic feet.

$Q_{oil,WAF}$ = The total quantity of crude oil that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(i)(C) of this chapter, in barrels.

$Q_{cond,WAF}$ = The total quantity of condensate that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(1)(i)(D) of this chapter, in barrels.

(3) For offshore petroleum and natural gas production wells that are part of a WEC applicable facility that are permanently shut-in and plugged in any reporting year, Equation E–4 of this section must be used to quantify the methane emissions attributable to the well.

$$E_{PW,CH_4} = \left(E_{Leaks,CH_4}\right) \times \frac{\left(\frac{Q_{ng,PW}}{6}\right) + Q_{oil,PW} + Q_{cond,PW}}{\left(\frac{Q_{ng,WAF}}{6}\right) + Q_{oil,WAF} + Q_{cond,WAF}} \quad \text{(Eq. E-4)}$$

Where:

$E_{PW,CH4}$ = The annual quantity of methane emissions attributable to an individual well that was permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility, mt CH_4.

$E_{Leaks,CH4}$ = The WEC applicable facility total annual quantity of methane emissions from non-compressor component level fugitives (*i.e.,* equipment leaks) reported pursuant to proposed § 98.236(s)(3)(ii) of this chapter for the reporting year, mt CH_4.

$Q_{ng,PW}$ = The total annual quantity of natural gas that is produced and sent to sale from the well in the reporting year as reported pursuant to proposed § 98.236(aa)(2)(iv) of this chapter, in thousand scf.

6 = Conversion factor from thousand standard cubic feet of natural gas to barrel of oil equivalent.

$Q_{oil,PW}$ = The total quantity of crude oil that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(v) of this chapter, in barrels.

$Q_{cond,PW}$ = The total quantity of condensate that is produced and sent to sale from the well in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(vi) of this chapter, in barrels.

$Q_{ng,WAF}$ = The total quantity of natural gas that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(i) of this chapter, in thousand scf.

$Q_{oil,WAF}$ = The total quantity of crude oil that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(ii) of this chapter, in barrels.

$Q_{cond,WAF}$ = The total quantity of condensate that is produced and sent to sale from the WEC applicable facility in the reporting year, as reported pursuant to proposed § 98.236(aa)(2)(iii) of this chapter, in barrels.

(c) Calculate the total emissions attributable to all wells included in the submittal received pursuant to § 99.51 using Equation E–5 of this section:

$$E_{Plug,CH_4} = \sum_{j=1}^{N} E_{PW,CH_4} \qquad \text{(Eq. E-5)}$$

$E_{Plug,CH4}$ = The total quantity of annual methane emissions, as determined in subpart E of this part, at the WEC applicable facility in the onshore petroleum and natural gas production and offshore petroleum and natural gas production industry segments, attributable to all wells that were permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements, mt CH_4.

$E_{PW,CH4}$ = The annual quantity of methane emissions attributable to a well ''j'' that was permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility calculated using Equation E–1, E–3, or E–4 of this section, as applicable.

N = Total number of wells that were permanently shut-in and plugged during the reporting year in accordance with all applicable closure requirements at a WEC applicable facility.

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G–14 To Shorten the Timeframe for Reporting Trades in Municipal Securities to the MSRB; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99402; File No. SR–MSRB–2024–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Rule G–14 To Shorten the Timeframe for Reporting Trades in Municipal Securities to the MSRB

January 19, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2024, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change to (i) amend Rule G–14 RTRS Procedures under MSRB Rule G–14, on reports of sales or purchases (''Rule G–14''), to shorten the amount of time within which brokers, dealers and municipal securities dealers (individually and collectively, ''dealers'') must report most transactions to the MSRB, require dealers to report certain transactions with a new trade indicator, and make certain clarifying amendments, and (ii) make conforming amendments to MSRB Rule G–12, on uniform practice (''Rule G–12''), and the MSRB's Real-Time Transaction Reporting System (''RTRS'') Information Facility (''IF–1'') to reflect the shortened reporting timeframe (collectively, the ''proposed rule change'').

If the Commission approves the proposed rule change, the MSRB will announce the effective date of the proposed rule change in a regulatory notice to be published on the MSRB website.

The text of the proposed rule change is available on the MSRB's website at *https://msrb.org/2024-SEC-Filings,* at the MSRB's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

Background

Since 2005, the MSRB has collected and disseminated information from dealers about their municipal securities purchase and sale transactions.[3] Dealers currently are required to report their transactions to RTRS within 15 minutes of the Time of Trade,[4] absent an exception,[5] in accordance with Rule G–14, the Rule G–14 RTRS Procedures, and the RTRS Users Manual.[6]

The transaction information collected by the MSRB in accordance with Rule G–14 serves the dual primary purposes of market transparency and market surveillance.[7] To advance the goal of market transparency, the MSRB disseminates trade reporting information from RTRS to paid subscribers through certain data subscription feeds. These data subscription feeds serve as the core source of price-related information used by market participants, industry utilities and vendors that, among other things, operate pricing-related tools and services used throughout the municipal market to support execution of trades at fair and reasonable prices that reflect current market values. To further advance the goal of market transparency and to make such price-related information available to individual investors and other market participants contemporaneously with data flowing to market professionals through the RTRS subscription feeds, the MSRB disseminates trade reporting information free of charge to the general public through the MSRB's centralized Electronic Municipal Market Access (''EMMA®'') website.[8]

To advance the goal of market surveillance, the MSRB maintains a comprehensive database of transaction information, which is made available to the examining authorities, including the Commission, the Financial Industry Regulatory Authority (''FINRA''), and other appropriate regulatory agencies. The availability of trade reporting data strengthens market transparency, promotes investor protection and reduces information asymmetry between institutional and retail investors.

Fixed income markets have changed dramatically since the current 15-minute requirement went into effect in 2005, including a significant increase in the use of electronic trading platforms or other electronic communication protocols to facilitate the execution of transactions. The MSRB has continued to explore ways to modernize the rule and provide for more timely, granular and informative data to further enhance the value of disseminated transaction data. In doing so, the MSRB has taken a measured and data-driven approach, using available trade reporting data and the public comment process to help inform its policy objectives and actions. The MSRB has utilized a series of concept releases, requests for comments and extensive outreach to solicit input from market participants and stakeholders.[9] As a result of these efforts

[3] *See* Exchange Act Release No. 50605 (Oct. 29, 2004), 69 FR 64346 (Nov. 4, 2004), File No. SR–MSRB–2004–06; *see also* MSRB Notice 2004–29 (Approval by the SEC of Real-Time Transaction Reporting and Price Dissemination: Rules G–12(f) and G–14) (September 2, 2004).

[4] Rule G–14 RTRS Procedures Section (d)(iii) defines ''Time of Trade'' as the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price.

[5] Transactions in securities without CUSIP numbers, transactions in municipal fund securities, and certain inter-dealer securities movements not eligible for comparison through a clearing agency are currently exempt from the reporting requirements under Rule G–14(b)(v).

[6] The RTRS Users Manual is available at *https://www.msrb.org/RTRS-Users-Manual.* Prior to the creation of RTRS in 2005, the MSRB collected trade data on an end-of-day basis for next day dissemination and surveillance purposes through a predecessor transaction reporting system.

[7] *See* Rule G–14(b)(i). Transaction information collected by RTRS is also used in connection with assessments under MSRB Rule A–13(d).

[8] *See* MSRB Notice 2009–22 (MSRB Receives Approval to Launch Primary Market Disclosure Service of MSRB's Electronic Municipal Market Access System (EMMA) for Electronic Dissemination of Official Statements) (May 22, 2009).

[9] *See* MSRB Notice 2013–02 (Request for Comment on More Contemporaneous Trade Price Information Through a New Central Transparency Platform) (Jan. 17, 2013); MSRB Notice 2013–14 (Concept Release on Pre-Trade and Post-Trade Pricing Data Dissemination through a New Central Transparency Platform) (July 31, 2013); MSRB Notice 2014–14 (Request for Comment on Enhancements to Post-Trade Transaction Data Disseminated Through a New Central Transparency Platform) (Aug. 13, 2014); MSRB Notice 2022–07 (Request for Comment on Transaction Reporting

and of RTRS re-engineering to ensure its on-going effectiveness as demands on the system were expected to rise over time, the MSRB has implemented various refinements to RTRS, RTRS Information Facility (IF–1), and the content and quality of trade-related information made available to investors and the public.[10]

The MSRB has found that, in 2022, approximately 73.7 percent of the trades in the municipal securities market that are currently subject to the 15-minute reporting timeframe were reported within one minute of execution, and approximately 97 percent of trades in the municipal securities market that are currently subject to the 15-minute reporting timeframe were reported within five minutes of execution.[11] In light of the technological advances and evolving market practices in the intervening 19 years since the MSRB first adopted the 15-minute reporting requirement, including the increase in electronic trading, and consistent with the MSRB's longstanding goals of increasing transparency and improving access to timely transaction data, the MSRB is proposing updates to modernize the reporting timeframes and provide timelier transparency. In this effort, the MSRB would continue to assess its RTRS reporting requirements in light of market developments, including reporting timeframes, and consider whether any further modifications are warranted.

Proposed Rule Change

The proposed rule change is intended to bring about greater market transparency through more timely disclosure and dissemination of information to market participants and market-supporting vendors so that the information better reflects current market conditions on a real-time basis, while carefully balancing the considerations raised by commenters throughout the rulemaking process.

The proposed amendments to Rule G–14 RTRS Procedures under Rule G–14 would:

- Establish a baseline one-minute trade reporting requirement;
- Establish a requirement that, with limited exceptions, trades be reported as soon as practicable and that dealers adopt policies and procedures in connection with this requirement;
- Create two new exceptions to the new one-minute reporting requirement, consisting of (1) a 15-minute exception for dealers with ''limited trading activity,'' and (2) a phased-in approach for implementation from 15 minutes to an eventual five-minute reporting requirement for ''trades with a manual component'';
- Maintain and clarify all existing exceptions to the current 15-minute reporting requirement, as well as the 15-minute from start of next day reporting requirement for trades conducted outside the trading day, so that they would continue to apply under the new one-minute reporting requirement;
- Require that dealers reporting any trade with a manual component use a new special condition indicator when the trade is reported to the MSRB;
- Specify that dealers may not purposely delay the execution or reporting of a transaction, introduce any manual steps following the Time of Trade, or otherwise modify any steps to execute or report the trade for the purpose of utilizing the manual trade exception;
- Provide that a rule violation would be found where there is a ''pattern or practice'' of late trade reporting without ''reasonable justification or exceptional circumstances''; and
- Clarify within Rule G–14 RTRS Procedures the usage of all existing and new special condition indicators.

The proposed rule change would also make certain conforming technical changes to Rule G–12(f)(i) and IF–1. A more detailed description of the proposed rule change follows.

If the proposed rule change is approved, the MSRB would review the available trade reporting information and data arising from implementation of the changes to trade reporting introduced by the proposed rule change, including but not limited to the two exceptions to the one-minute reporting requirement. Such monitoring would inform any further potential changes by the MSRB, through future rulemaking, to the trade reporting requirements due to increasing marketplace and technology efficiencies, process improvements, continuing or new barriers to accelerated reporting, unanticipated market impacts, or other factors.

New Baseline Reporting Requirement: One Minute After the Time of Trade

Proposed amendments to Rule G–14 RTRS Procedures Section (a)(ii) generally would provide that transactions effected with a Time of Trade during the hours of an RTRS Business Day[12] must be reported to an RTRS Portal[13] ''as soon as practicable, but no later than one minute'' (rather than within the current 15-minute standard) after the Time of Trade, subject to several existing reporting exceptions, which would be retained in the amended rule,[14] and two new intra-day reporting exceptions relating to dealers with limited trading activity and trades with a manual component that would be added by the proposed rule change, as described below.[15] Except for those trades that would qualify for a reporting exception, all trades currently required to be reported within 15 minutes after the Time of Trade would, under the proposed rule change, be required to be reported no later than one minute after the Time of Trade.

Obligations under MSRB Rule G–14) (Aug. 2, 2022) (the ''2022 Request for Comment'').

[10] *See, e.g.,* Exchange Act Release No. 75039 (May 22, 2015), 80 FR 31084 (June 1, 2015), File No. SR–MSRB–2015–02, and Exchange Act Release No. 77366 (Mar. 14, 2016), 81 FR 14919 (Mar. 18, 2016), File No. SR–MSRB–2016–05 (expanding and adding trade indicators); Exchange Act Release No. 83038 (Apr. 12, 2018), 83 FR 17200 (Apr. 18, 2018), File No. SR–MSRB–2018–02 (modernizing RTRS Information Facility (IF–1)).

[11] *See infra* ''Self-Regulatory Organization's Statement on Burden on Competition—Trade Reporting Analysis'' in Section 4(a) Table 1. Trade Report Time by Trade Size—Cumulative Percentages. January to December 2022.

[12] Rule G–14 RTRS Procedures Section (d)(ii) defines ''RTRS Business Day'' as 7:30 a.m. to 6:30 p.m., Eastern Time, Monday through Friday, unless otherwise announced by the MSRB.

[13] RTRS has three ''Portals'' for submission of transaction data, and aspects of RTRS are designed to function in coordination with the Real-Time Trade Matching (''RTTM'') system of the Depository Trust & Clearing Corporation (''DTCC'') in conjunction with its subsidiary National Securities Clearing Corporation. Rule G–14 RTRS Procedures Section (a)(i) describes the three RTRS Portals: Message Portal used for trade submission and trade modification as described in Section (A) thereof; RTRS Web Portal used for low-volume transaction submission and modification as described in Section (B) thereof; and RTTM Web Portal used only for inter-dealer transactions eligible for automated comparison as described in Section (C) thereof.

[14] Three of these existing exceptions, consisting of List Offering Price/Takedown Transactions, trades in certain short-term or variable rate instruments, and away from market trades, require that trades be reported by the end of the day on which they are executed and do not rely on the Time of Trade. These three end-of-trade-date reporting exceptions would be retained without change and would be redesignated as Rule G–14 RTRS Procedures Section (a)(ii)(A)(1), (2) and (3), respectively. Two other existing exceptions for certain special circumstances would also be retained without change, consisting of dealers reporting inter-dealer ''VRDO ineligible on trade date'' transactions, which must be reported by the end of the day on which the trade becomes eligible for automated comparison, and of dealers reporting inter-dealer ''resubmission of an RTTM cancel,'' which must be reported by the end of the next RTRS Business Day following cancellation of the original trade. These two exceptions would be redesignated as Rule G–14 RTRS Procedures Sections (a)(ii)(B)(1) and (2), respectively.

[15] The two new intra-day reporting exceptions, consisting of trades by dealers with limited trading activity and trades with a manual component, would be designated as Rule G–14 RTRS Procedures Sections (a)(ii)(C)(1) and (2), respectively.

New Requirement To Report Trades ''as Soon as Practicable''

The proposed amendment to Rule G–14 RTRS Procedures Section (a)(ii) adds a new requirement that, absent an exception, trades must be reported as soon as practicable (but no later than one minute after the Time of Trade). In addition, this same ''as soon as practicable'' requirement would apply to trades subject to longer trade reporting deadlines under the two new exceptions for dealers with limited trading activity pursuant to Rule G–14 RTRS Procedures Section (a)(ii)(C)(1) and Supplementary Material .01,[16] or trades with a manual component pursuant to Rule G–14 RTRS Procedures Section (a)(ii)(C)(2) and Supplementary Material .02,[17] as described below.

The new ''as soon as practicable'' language, which does not currently appear in Rule G–14 RTRS Procedures, would harmonize this element of RTRS trade reporting requirements for municipal securities with FINRA's trade reporting requirement for its Trade Reporting and Compliance Engine (''TRACE'') for TRACE-eligible securities.[18] Thus, while Rule G–14 RTRS Procedures do not currently explicitly prohibit a dealer from waiting until the existing 15-minute deadline to report a trade notwithstanding the fact that the dealer could reasonably have reported such trade more rapidly, under the proposed rule change a dealer could not simply await the deadline to report a trade if it were practicable to report such trade more rapidly.

In connection with the new ''as soon as practicable'' requirement, the proposed rule change includes new Supplementary Material .03 relating to policies and procedures for complying with the ''as soon as practicable'' reporting requirement. Under proposed Supplementary Material .03(a), consistent with Supplementary Material .03(a) of FINRA Rule 6730, dealers would be required to adopt policies and procedures reasonably designed to comply with the ''as soon as practicable'' standard and would be required to implement systems that commence the trade reporting process without delay upon execution. Where a dealer has reasonably designed policies, procedures and systems in place, the dealer generally would not be viewed as violating the ''as soon as practicable'' requirement because of delays in trade reporting due to extrinsic factors that are not reasonably predictable and where the dealer does not intend to delay the reporting of the trade (for example, due to a systems outage). Dealers must not purposely withhold trade reports, for example, by programming their systems to delay reporting until the last permissible minute or by otherwise delaying reports to a time just before the deadline if it would have been practicable to report such trades more rapidly.

For trades with a manual component, and consistent with Supplementary Material .03(b) of FINRA Rule 6730, the MSRB recognizes that the trade reporting process may not be completed as quickly as, for example, where an automated trade reporting system is used. In these cases, the MSRB expects that the regulatory authorities that examine dealers and enforce compliance with this requirement would take into consideration the manual nature of the dealer's trade reporting process in determining whether the dealer's policies and procedures are reasonably designed to report the trade ''as soon as practicable'' after execution.[19]

Time of Trade Discussion

The ''Time of Trade'' is the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price.[20] While the definition of Time of Trade would not be changed, the precision with which the establishment of the Time of Trade for a particular transaction would become more critical in the context of the proposed shorter, one-minute reporting requirement compared to the current 15-minute reporting requirement because, absent an exception, dealers would have less time to report the trade. The time taken to report the trade is measured by comparing the Time of Trade reported by the dealer with the timestamp assigned when the initial trade report is received by an RTRS Portal.[21] For transaction reporting purposes, Time of Trade is considered to be the same as the time that a trade is ''executed'' and, generally, is consistent with the ''time of execution'' for recordkeeping purposes.[22] Importantly, the time that the trade is executed is not necessarily the time that the trade information is entered into the dealer's processing system. For example, if a trade is executed on a trading desk but not entered for processing until later, the time of execution (not the time of entering the record into the processing system) is required to be reported as the ''Time of Trade.'' [23]

While the principles of contract law are mostly governed by state statutory and common law, generally, in order to form a valid contract, there must be at least an offer and acceptance of that offer. As a result, dealers should consider the point in time at which an offer to buy or sell municipal securities was met with an acceptance of that offer. This offer and acceptance, or a ''meeting of the minds,'' [24] cannot occur before the final material terms, such as the exact security, price and quantity, have been agreed to and such terms are known by the parties to the transaction.[25] Further, dealers should be

[16] *See infra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Dealers with Limited Trading Activity.''

[17] *See infra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component.''

[18] *See e.g.,* FINRA Rule 6730(a).

[19] *See* Supplementary Material .03(b) of FINRA Rule 6730. *See also infra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component'' for a discussion of the new exception for trades with a manual component.

[20] *See* current Rule G–14 RTRS Procedures Section (d)(iii).

[21] *See* Exchange Act Release No. 49902 (June 22, 2004), 69 FR 38925 (June 29, 2004), File No. SR–MSRB–2004–02; *see also* MSRB Notice 2004–13 (Real-Time Transaction Reporting: Notice of Filing of Proposed Rule Change to Rules G–14 and G–12(f)) (June 1, 2004); IF–1.

[22] *See* Rule G–8(a)(vi) and (vii); *see also* RTRS G–14 Transaction Reporting Procedures (FAQs regarding Time of Trade Reporting) at question 8 (Aug. 1, 1996); MSRB Notice 2016–19 (MSRB Provides Guidance on MSRB Rule G–14, on Reports of Sales or Purchases of Municipal Securities) at question 1 (Aug. 9, 2016) (the ''2016 RTRS FAQs''). Pursuant to Rule G–15(a)(vi)(A), the time of execution reflected on customer confirmations is required to be the same as the time of execution reflected in the dealer's records and thus should generally be consistent with the time of trade reported by the dealer.

[23] *See* RTRS Users Manual (Questions and Answers on Reporting Trades), at question 1 (Aug. 09, 2016), available at *https://www.msrb.org/Questions-and-Answers-Notice-Concerning-Real-Time-Reporting-Municipal-Securities-Transactions.* Similarly, transactions effected outside of the hours of an RTRS Business Day are required to be reported within 15 minutes after the start of the next RTRS Business Day. The time the trade was executed (rather than the time that the trade report is made) is the ''Time of Trade'' required to be reported.

[24] *See* FINRA Regulatory Notice 16–30 (Trade Reporting and Compliance Engine (TRACE): FINRA Reminds Firms of their Obligation to Report Accurately the Time of Execution for Transactions in TRACE-eligible Securities) (Aug. 2016) (describing this meeting of the minds that substantively parallels the guidance provided by the MSRB in the 2016 RTRS FAQs at questions 1 and 2).

[25] *See* MSRB Notice 2004–18 (Notice Requesting Comment on Draft Amendments to Rule G–34 to Facilitate Real-Time Transaction Reporting and Explaining Time of Trade for Reporting New Issue Trades) (June 18, 2004) (''Transaction reporting procedures define the 'time of trade' as the time when a contract is formed for a sale or purchase of municipal securities at a set price and set quantity. For purposes of transaction reporting, this is considered to be the same as the time that a trade is 'executed.'") (internal citations omitted); *see also* 2016 RTRS FAQs at question 1.

clear in their communications regarding the final material terms of the trade and how such terms would be conveyed between the parties to ensure that such a valid trade contract has been formed.[26]

In the context of new issue securities, the MSRB has previously stated that a transaction effected on a ''when, as and if issued'' basis cannot be executed, confirmed and reported until the municipal security has been formally awarded by the issuer.[27] Thus, while dealers may take orders for securities and make conditional trading commitments prior to the award, dealers cannot execute transactions, send confirmations or make a trade report prior to the time of formal award. The MSRB has previously characterized pre-sale orders as expressions of the purchasers' firm intent to buy the new issue securities in accordance with the stated terms, which order may only be executed upon the award of the issue or the execution of a bond purchase agreement.[28] Importantly, such expressions of an intent to purchase municipal securities are subject to material conditions that negate execution of an agreed upon offer and acceptance until the issuer has committed to the issuance of the securities.

The MSRB believes that this same rationale applies to secondary market transactions where the commitment of the parties is subject to material conditions. When a sales representative of a dealer takes a customer order, but is unable to execute that order until their trader performs supervisory or other firm-mandated reviews or approvals of such order—for example, to determine that the customer order does not exceed internally-set risk and compliance parameters or to complete best-execution, suitability/best interest or fair pricing protocols that may result in a changed price or quantity to the customer or in not completing execution of the trade—the dealer reasonably may determine that the ''meeting of the minds'' has not yet occurred until such processes, procedures or protocols have been completed and the dealer has affirmatively ''accepted'' the order. In such circumstances, the dealer should be clear in its communications with its counterparty regarding the final terms of the trade and how such terms would be conveyed between the parties to ensure that such a valid trade contract has been formed, such as clearly communicating to the customer that the order should not be viewed as accepted until such processes, procedures or protocols are completed and the trade is finally executed. Such processes, procedures or protocols should be appropriately reflected in a dealer's written policies and procedures. Because the Time of Trade is tied to the contractual agreement (that is, offer and acceptance, whether oral or written) between the parties to a transaction, a dealer and its counterparty may come to an express agreement as to the Time of Trade for a given transaction, as appropriate, that is consistent with the time at which the agreement becomes binding upon the parties under contract law.

Exceptions to the Baseline Reporting Requirement

Proposed amendments to Rule G–14 RTRS Procedures Section (a)(ii) add two new exceptions to the proposed one-minute reporting requirement. New Section (C)(1) provides an exception for a dealer with ''limited trading activity'' and new Section (C)(2) provides an exception for a dealer reporting a ''trade with a manual component.'' These two new exceptions would have the narrowly-tailored purpose of addressing the timing of trade reporting for the dealers and transactions qualifying for one of the exceptions (either retaining the current 15-minute timeframe or taking a more stepwise approach to shortening the reporting timeframe). As with the existing exceptions, these two new exceptions would not alter or diminish any of the investor protections afforded by other MSRB rules or federal securities laws or regulations applicable to pricing, best execution, disclosure, suitability/best interest, and other aspects of the trades being reported.

Exception for Dealers With Limited Trading Activity

A dealer with ''limited trading activity'' would be excepted from the one-minute reporting requirement pursuant to new Section (a)(ii)(C)(1) and would instead be required to report its trades as soon as practicable, but no later than 15 minutes after the Time of Trade for so long as the dealer remains qualified for the limited trading activity exception, as further specified in new Supplementary Material .01.[29]

Proposed Section (d)(xi) of Rule G–14 RTRS Procedures defines a dealer with limited trading activity as a dealer that, during at least one of the prior two consecutive calendar years, reported to an RTRS Portal fewer than 1,800 transactions, excluding transactions exempted under Rule G–14(b)(v) and transactions specified in Rule G–14 RTRS Procedures Sections (a)(ii)(A) and (B) (*i.e.,* transactions having an end-of-trade-day reporting exception).[30] A dealer relying on this exception to report trades within the 15-minute timeframe, rather than the new standard one-minute timeframe, must confirm that it meets the criteria for a dealer with limited trading activity for each year during which it continues to rely on the exception (*e.g.,* the dealer could confirm its eligibility based on its internal trade records and by checking MSRB compliance tools, as described below, which would indicate a dealer's transaction volume for a given year).[31] If a dealer does not meet the criteria for a given calendar year (that is, has 1,800 or more transactions not having an end-of-trade-day or post-trade-day reporting exception in both preceding calendar years), such dealer would not be eligible for the exception, after a three-month grace period at the beginning of such calendar year, for transactions reported on and after April 1 of such calendar year. Therefore, the dealer would be required to report transactions to RTRS no later than one minute after the Time of Trade for the remainder of that calendar year, unless another exception under the rule applies. A dealer that meets the criteria for a given calendar

[26] *See* FINRA Regulatory Notice 16–30 (Trade Reporting and Compliance Engine (TRACE): FINRA Reminds Firms of their Obligation to Report Accurately the Time of Execution for Transactions in TRACE-eligible Securities) (Aug. 2016).

[27] 2016 RTRS FAQs at question 2.

[28] *See* MSRB Interpretive Guidance, Rule G–12 (Confirmation: Mailing of WAII Confirmation) (Apr. 30, 1982). In the same vein, retail orders submitted during a retail order period under MSRB Rule G–11 are viewed as conditional commitments. *See* MSRB Rule G–11(a)(vii) (defining the term ''retail order period''). *See also, e.g.,* MSRB Notice 2014–14 (Request for Comment on Enhancements to Post-Trade Transaction Data Disseminated Through a New Central Transparency Platform) (Aug. 13, 2014) (describing the conditional nature of conditional trading commitments).

[29] Transactions effected by such a dealer with a Time of Trade outside the hours of an RTRS Business Day would be permitted to be reported no later than 15 minutes after the beginning of the next RTRS Business Day pursuant to Rule G–14 RTRS Procedures Section (a)(iii). As is the case today, transactions for which an end-of-trade-day or post-trade-day reporting exception is available under redesignated Sections (A) and (B) would continue to have that exception available.

[30] This number of transactions is expected to capture approximately 1.5 percent of the trades in the municipal securities markets in a given calendar year, based on transaction data from calendar year 2022, and generally aligns with FINRA's proposal to similarly shorten trade reporting requirements for TRACE-eligible securities, in which FINRA would except dealers with similarly limited trading activity for the respective markets of TRACE-eligible securities. *See* File No. SR–FINRA–2024–004 (Jan. 11, 2024) (the ''2024 FINRA Proposed Rule Change'').

[31] *See infra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Dealers with Limited Trading Activity.''

year may utilize the exception on or after January 1 of such calendar year.[32]

For example, assume the following hypothetical trade counts for Dealer X for a given calendar year: [33]

Calendar year	Trade count [34]	Eligible for exception during calendar year?
2024	1,900	N/A.
2025	1,700	N/A.
2026	2,000	Yes, based on 2025 trade count below the 1,800 threshold.
2027	1,900	Yes, based on 2025 trade count below the 1,800 threshold.
2028	1,700	No, based on 2026 and 2027 trade counts above the 1,800 threshold in both years (must transition reporting to one minute on and after April 1, 2028).
2029	2,000	Yes, based on 2028 trade count below the 1,800 threshold (may resume reporting in 15 minutes on January 1, 2029).

Based on the hypothetical data presented in the table above, Dealer X would be eligible for the exception as a dealer with limited trading activity for the calendar years 2026 and 2027 effective January 1 of each such year,[35] based on trade count for the year 2025. However, Dealer X would no longer qualify for such an exception for the calendar year 2028. As a result, for 2028, beginning on and after April 1, 2028, after the three-month grace period, Dealer X must begin reporting all of its trades (other than those subject to another exception) no later than one minute after the Time of Trade. However, Dealer X would again qualify for calendar year 2029 as a dealer with limited trading activity based upon its 2028 trade count and may resume reporting its trades no later than 15 minutes after the Time of Trade on January 1, 2029.

As shown above, this approach may cause some dealers' eligibility for the exception to change from year to year. However, based on substantial historical trade reporting data, the majority of dealers that are eligible for the exception are expected to stay within the exception. Similarly, the majority of dealers that are not eligible for the exception are expected to remain ineligible for the exception in subsequent years.[36]

Notwithstanding the foregoing, dealers with limited trading activity are reminded of the new overarching obligation to report trades as soon as practicable, as described above.[37]

Exception for Trades With a Manual Component

A ''trade with a manual component'' as defined in new Section (d)(xii) of Rule G–14 RTRS Procedures would be excepted from the one-minute reporting requirement pursuant to Rule G–14 RTRS Procedures Section (a)(ii)(C)(2). Instead, dealers with such trades would be required to report such trades as soon as practicable and within the time periods specified in new Supplementary Material .02, unless another exception from the one-minute reporting requirement applies under proposed Rule G–14 RTRS Procedures Sections (a)(ii)(A) and (B) (*i.e.,* transactions having an end-of-trade-day or post-trade-day reporting exception) or (a)(ii)(C)(1) (*i.e.,* transactions by dealers with limited trading activity).[38]

Trades Having a Manual Component

As proposed, Section (d)(xii) of Rule G–14 RTRS Procedures would define a ''trade with a manual component'' as a transaction that is manually executed or where the dealer must manually enter any of the trade details or information necessary for reporting the trade directly into an RTRS Portal (for example, by manually entering trade data into the RTRS Web Portal) or into a system that facilitates trade reporting (for example, by transmitting the information manually entered into a dealer's in-house or third-party system) to an RTRS Portal. As described below, a dealer reporting to the MSRB a trade meeting the definition for a ''trade with a manual component'' would be required to append a new trade indicator so that the MSRB can identify manual trades.[39]

This ''manual'' exception would apply narrowly, and would normally encompass any human participation, approval or other intervention necessary to complete the initial execution and reporting of trade information after execution, regardless of whether undertaken by electronic means (*e.g.,* keyboard entry), physical signature or other physical action. To qualify as a trade with a manual component, the manual aspect(s) of the trade generally would occur after the relevant Time of Trade (*i.e.,* the time at which a contract is formed for the transaction). Any manual aspects that precede the time of trade (*e.g.,* phone calls to locate bonds to be sold to a customer before the dealer agrees to sell such bonds to a purchasing customer) would normally not be relevant for purposes of the exception unless they have a direct impact on the activities that must be

[32] A previously active dealer that newly becomes eligible for the exception for dealers with limited trading activity following the first year of the implementation of the proposed rule change may continue to see their trades marked as late on RTRS report cards and related RTRS feedback based on the one-minute deadline for a short period of time at the beginning of a new calendar year until the MSRB is able to systematically update the dealer's status in the RTRS system. Any such late indicator would not, for examination or enforcement purposes, be viewed as a violation by a dealer that otherwise was qualified as a dealer with limited trading activity at the time of the report.

[33] While the first two years of data shown in the chart represent trades occurring in years prior to the likely effective date of the proposed rule change, such data would be used to determine whether a dealer would be eligible for the limited trading activity exception in the first years after the effective date. The chart assumes that the first calendar year in which the new reporting timeframes under the proposed rule change, including the exception for a dealer with limited trading activity, would be effective is calendar year 2026.

[34] The trade count is intended to reflect the number of transactions not subject to a reporting exception under proposed Section (a)(ii) of Rule G–14 RTRS Procedures. For purposes of illustration, the hypotheticals include manual trades subject to an intra-day exception as proposed.

[35] *See supra* n.32.

[36] Approximately 30 out of 647 dealers reporting trades, or less than five percent of such dealers, were within a 20 percent deviation of 1,800 trades in 2022.

[37] *See infra* ''Purpose—Proposed Rule Change—New Requirement to Report Trades 'as Soon as Practicable.' ''

[38] Transactions effected with a Time of Trade outside the hours of an RTRS Business Day would be permitted to be reported no later than 15 minutes after the beginning of the next RTRS Business Day pursuant to Rule G–14 RTRS Procedures Section (a)(iii).

[39] *See infra* ''Purpose—Proposed Rule Change—Manual Trade Indicator.'' As described therein, such new indicator would be required for any trade with a manual component, whether the dealer reports such trade within the new one-minute timeframe or the dealer seeks to take advantage of the longer timeframes permitted for trades with a manual component.

undertaken post-execution to enter information necessary to report the trade.[40]

In that regard, while an exhaustive list cannot be provided here, the MSRB contemplates that the exception would often be appropriately applicable to the following situations, depending on the specific facts and circumstances, due to the manual nature of components of the trade execution or reporting process that would make reporting a transaction within one minute of the Time of Trade unfeasible, even where the dealer makes reasonable efforts to report the trade as soon as practicable after execution (as required):

- where a dealer executes a trade by manual or hybrid means, such as voice or negotiated trading by telephone, email, or through a chat/messaging function, and subsequently must manually enter into a system that facilitates trade reporting all or some of the information required to book the trade and report it to RTRS;
- where a dealer executes a trade (typically a larger-sized trade) that requires additional steps to negotiate and confirm details of the trade with a client and manually enters the trade into risk and reporting systems;
- where a dually-registered broker-dealer/investment adviser executes a block transaction that requires allocations of portions of the block trade to the individual accounts of the firm's advisory clients that must be manually inputted in connection with a trade;
- where an electronically or manually executed trade is subject to manual review by a second reviewer for risk management (*e.g.,* transactions above a certain dollar or par amount or other transactions meriting heightened risk review) and, as part of or following the review, the trade must be manually approved, amended or released before the trade is reported to RTRS;
- where a dealer's trade execution processes may entail further diligence following the Time of Trade involving a manual step (*e.g.,* manually checking another market to confirm that a better price is not available to the customer);[41]
- where a dealer trades a municipal security, whether for the first time or under other circumstances where the security master information may not already be populated (*e.g.,* information has been removed or archived due to a long lapse in trading the security), and additional manual steps are necessary to set up the security and populate the associated indicative data in the dealer's systems prior to executing and reporting the trade;
- where a dealer receives a large order or a trade list resulting in a portfolio of trades with potentially numerous unique securities involving rapid execution and frequent communications on multiple transactions with multiple counterparties, and the dealer must then book and report those transactions manually, one by one;[42]
- where a broker's broker engages in mediated transactions that involve multiple transactions with multiple counterparties; and
- where a dealer reports a trade manually through the RTRS Web Portal.

Dealers should review their trade flow and processes and consider which of their trades would be deemed a ''trade with a manual component'' under the proposed rule change.[43]

The appropriateness of treating any step in the trade execution and reporting process as being manual must be assessed in light of the anti-circumvention provision included in the proposed rule change with regard to the delay in execution or insertion of manual tasks for the purpose of meeting this new exception.[44] New Supplementary Material .02(a) would require all trades with a manual component to be reported as soon as practicable and would specify that in no event may a dealer purposely delay the execution of an order, introduce any manual steps following the Time of Trade, or otherwise modify any steps prior to executing or reporting a trade for the purpose of utilizing the exception for manual trades.[45] New Supplementary Material .03 would require that dealers adopt policies and procedures for complying with the as soon as practicable reporting requirement, including by implementing systems that commence the trade reporting process without delay upon execution and provides for additional guidance for regulatory authorities that enforce and examine dealers for compliance with this requirement to take into consideration the manual nature of the dealer's trade reporting process.[46]

In light of the overarching obligation to report trades as soon as practicable, dealers should consider the types of transactions in which they regularly engage and whether they can reasonably reduce the time between a transaction's Time of Trade and its reporting, and more generally should make a good faith effort to report their trades as soon as practicable.[47] Each dealer seeking to comply with the proposed rule change—including the one-minute

[40] This manual exception applies to the reporting of a trade upon the trade being executed. If a report has been made and the dealer detects a mistake that requires cancellation or correction, any modification of an already submitted trade report must be performed as soon as possible pursuant to Rule G–14 RTRS Procedures Section (a)(iv). *See* MSRB Interpretive Guidance (Reminder Regarding Modification and Cancellation of Transaction Reports: Rule G–14) (Mar. 2, 2005), available at *https://www.msrb.org/Reminder-Regarding-Modification-and-Cancellation-Transaction-Reports-Rule-G-14.* While a trade modification to a previously reported automated trade may be manual in nature (for example, the trade is corrected through the RTRS Web Portal or is corrected through a dealer's system and not using a cancel and replace process), that manual modification process would not, by itself, result in the initial trade qualifying as a trade with a manual component. Where the trade correction is made through a cancel and replace process, the time of trade must reflect the time of execution of the initial trade report and not the time when the modification was reported to RTRS. While RTRS will continue to provide dealers with the option to either modify the trade or cancel and replace the trade, the MSRB has stated that modification is preferred when changes are necessary because a modification is counted as a single change to a trade report, whereas cancellation and resubmission are counted as a change and (unless the resubmission is done within the original deadline for reporting the trade) also as a late report of a trade. *Id.; see also infra* n.50.

[41] Dealers experiencing significant levels of post-Time of Trade price adjustments due to such post-trade best execution processes should consider whether these processes are well suited to the dealer's obligations under MSRB Rule G–18 and whether the dealer is appropriately evaluating when a contract has in fact been formed with its customer.

[42] In instances where a dealer trades a basket of securities at a single price for the full basket, rather than individual prices for each security based on its then-current market price, such price likely would be away from the market, requiring inclusion of the ''away from market'' special condition indicator and qualifying for an end-of-trade-day reporting exception under proposed Rule G–14 RTRS Procedures Section (a)(ii)(A)(3).

[43] Dealers should undertake this review regardless of whether they intend to take advantage of the longer timeframes permitted for trades with a manual component since all reports of trades meeting the definition of a trade with a manual component would be required to append the new manual trade indicator, as described *infra* ''Purpose—Proposed Rule Change—Manual Trade Indicator.''

[44] *See infra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component—Prohibition on Purposeful Insertion of Manual Steps in Trade Reporting Process.''

[45] *Id.*

[46] *See infra* ''Purpose—Proposed Rule Change—New Requirement to Report Trades 'as Soon as Practicable.' ''

[47] *See infra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component.'' For trades with a manual component, the MSRB recognizes that the trade reporting process may not be completed as quickly as, for example, where an automated trade reporting system is used. In these cases, the MSRB expects that the regulatory authorities that examine dealers and enforce compliance with this requirement would take into consideration the manual nature of the dealer's trade reporting process in determining whether the dealer's policies and procedures are reasonably designed to report the trade ''as soon as practicable'' after execution.

reporting requirement and new or existing exceptions from such requirement—should consider the extent to which it can automate its trade reporting and related execution processes, consistent with its client's needs and the dealer's best execution and other regulatory obligations. Where automation is not feasible at a reasonable cost in light of the specific facts and circumstances with respect to the dealer's trading activity and overall business (*e.g.,* the level, nature and economic viability of its activity in municipal securities), dealers should be implementing more efficient trade entry processes to meet the applicable reporting requirement, including the new requirement to report trades as soon as practicable, particularly with a view to the phased-in reduction in the reporting timeframe for trades with a manual component under the proposed rule change where a process that may provide sufficient time to report timely during the first year may not be sufficiently efficient to meet the further shortened timeframe in a subsequent year. The MSRB expects that dealers would periodically assess their systems and processes to ensure that they have implemented sufficiently efficient policies and procedures for timely trade reporting.

The MSRB currently collects and analyzes data regarding dealers' historic reporting of transactions to RTRS under various scenarios and such data will continue to be available to the regulators for analysis under the proposed one-minute standard. Subject to the Commission approval of the proposed rule change, the MSRB would be reviewing the use of the manual exception and would share with the examining authorities any analyses resulting from such reviews.

Phase-In Period for Trades With a Manual Component

New Supplementary Material .02(b) would subject trades with a manual component to a phase-in period for timely reporting over three years (''phase-in period''). Specifically, during the first year of effectiveness of the exception, trades meeting this definition would be required to be reported as soon as practicable, but no later than 15 minutes after the Time of Trade.[48] During the second year, such trades would be required to be reported as soon as practicable, but no later than 10 minutes after the Time of Trade. After the second year and thereafter, such trades would be required to be reported as soon as practicable, but no later than five minutes after the Time of Trade.

In establishing the phase-in period, the MSRB intends to provide sufficient time for dealers to implement programming and/or other policy and process changes necessary to meet an eventual five-minute reporting requirement, as well as to provide regulators an opportunity to assess any potential market impact from the gradual reduction in reporting timeframe. However, dealers are also reminded that the ''as soon as practicable'' reporting obligation as described above may, depending on the facts and circumstances, require quicker reporting than the applicable outer reporting obligation during and after the phase-in period. For example, while dealers must report their trades with a manual component no later than 15 minutes from the Time of Trade during the first year that the rule is operational, dealers should be reviewing their policies, procedures and practices and considering whether they can report such trades more quickly. In general, the MSRB would expect a dealer's trade reporting statistics to show overall improvements in trade reporting speed without compromising data quality, due to the new ''as soon as practicable'' obligation and the two new intra-day exceptions.

If the proposed rule change is approved, the MSRB would be reviewing the available trade reporting information and data arising from implementation of the changes to trade reporting introduced by the proposed rule change, including but not limited to the two exceptions to the one-minute reporting requirement, as well as marketplace developments, feedback from market participants, and examination or enforcement findings from the Commission, FINRA and the other appropriate regulatory agencies. Such monitoring would inform any further potential changes by the MSRB to the trade reporting requirements.

Prohibition on Purposeful Insertion of Manual Steps in Trade Reporting Process

As noted above, new Supplementary Material .02(a) would specifically prohibit dealers from purposely delaying the execution of an order, introducing any manual steps following the Time of Trade, or otherwise purposefully modifying any steps to execute or report a trade to utilize the exception for manual trades. This would not prohibit reasonable manual steps that are taken for legitimate purposes (such as a manual review of trades that exceed certain risk thresholds or that meet certain criteria for regulatory purposes). Further, this prohibition would not apply to any steps that are taken prior to the time of trade that do not have the effect of delaying the subsequent reporting of such trade.

It is important to note that a manual step added to the trade execution or reporting process that may have only a nominal or pretextual purpose other than qualifying a trade for the exception for manual trades, particularly where such purpose can be effectively fulfilled in an alternative manner that does not introduce such manual step into the trade execution or reporting process, may be viewed as being made for the purpose of qualifying for this exception within the meaning of proposed Supplementary Material .02(a), depending on the facts and circumstances. This express prohibition is intended to facilitate movement in the direction of more timely reporting and increased transparency in circumstances where there is no reasonable justification for the delay in trade execution and related subsequent trade reporting or for insertion of manual steps after the Time of Trade.

Manual Trade Indicator

Proposed amendments to Rule G–14 RTRS Procedures Section (b)(iv) would require the report of a trade meeting the MSRB's definition for a ''trade with a manual component,'' as defined in proposed Section (d)(xii) of Rule G–14 RTRS Procedures,[49] to append a new trade indicator to such a trade report. This indicator would be mandatory for every trade that meets the standard to append the indicator,[50] regardless of whether the trade is actually reported within one minute after the Time of Trade, is reported within the applicable timeframe under the manual trade exception or is otherwise subject to another reporting exception.

In addition to serving as a critical component of the manual trade exception, this trade indicator would

[48] While the deadline for reporting during this first year would remain the same as the current 15-minute timeframe, such trade reports would also be subject to the new requirement that they be reported as soon as practicable. *See supra* ''Purpose—Proposed Rule Change—New Requirement to Report Trades 'as Soon as Practicable.' ''

[49] *See supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component—Trades Having a Manual Component.''

[50] Rule G–14 RTRS Procedures Section (a)(iv) currently requires that transaction data that is not submitted in a timely and accurate manner must be submitted or corrected as soon as possible. *See also supra* n.40. The manual trade indicator is not intended to be used to reflect the manual nature of any correction to a prior trade report; rather the use of the indicator is driven solely by whether or not the initial trade had a manual component.

allow the MSRB to collect additional data to help it better understand the extent to which the municipal securities market continues to operate manually.[51] Such understanding would assist the MSRB in engaging with market participants regarding impediments to greater use of automation, and help determine the effectiveness and potential impediments to full compliance with the proposed phase-in period to determine whether adjustments should be made or other next steps should be taken.

Pattern or Practice of Late Trade Reporting

Rule G–14 RTRS Procedures Section (a)(iv) currently requires that transaction data that is not submitted in a timely and accurate manner must be submitted or corrected as soon as possible—even when a dealer is late in reporting a trade, the dealer remains obligated to report such trade as soon as possible. Proposed amendments to this section would further provide that any transaction that is not reported within the applicable time period shall be designated as ''late.'' [52] A pattern or practice of late reporting without exceptional circumstances or reasonable justification may be considered a violation of Rule G–14.

The determination of whether exceptional circumstances or reasonable justifications exist for late trade reporting is dependent on the particular facts and circumstances and whether such circumstances are addressed in the dealer's systems and procedures. For example, failures or latencies of MSRB, third-party or internal systems used to submit trade information generally would constitute exceptional circumstances or reasonable justifications, particularly where such incident is outside of the reasonable control of the dealer and could not be resolved by the dealer within the applicable reporting timeframe. However, dealers must have sufficiently robust systems with adequate capability and capacity to enable them to report in accordance with Rule G–14; thus, recurring systems issues in a dealer's or a vendor's systems would not be considered reasonable justification or exceptional circumstances to excuse a pattern or practice of late trade reporting. As another example, unusual market conditions, such as extreme volatility in a security or in the market as a whole, can constitute exceptional circumstances. In addition, a dealer may have reasonable justification for late trade reporting where it is executing a bid list that includes a large number of distinct securities that cannot reasonably be reported within the applicable timeframe. These three examples do not represent the only potential situations that could constitute exceptional circumstances or reasonable justification. Dealers would bear the burden of proof related to such exceptional circumstances or reasonable justification.

The pattern or practice approach to determining rule violations would take into consideration factors such as the complexity of the trade, differences in market segments, differences in the execution of trades of varying types of municipal securities products, impediments to use of straight through processing and electronic trading venues, the nature and purpose of any manual steps involved in the execution and reporting of transactions with a manual component, the existence of systems and procedures that provide for reporting timeliness and any other relevant factors to determine if a rule violation has occurred. While this approach recognizes that there may be legitimate situations involving exceptional circumstances or reasonable justification in which trades may not be reported within the required time limit, dealers are reminded of the overarching obligation to report trades as soon as practicable in light of the effects of such circumstances or justification. As a result, all dealers should consider the types of transactions in which they regularly engage and whether they can reasonably reduce the time between a transaction's Time of Trade and its reporting, and more generally should make a good faith effort to report their trades as soon as practicable.

The MSRB expects that the regulatory authorities that examine dealers and enforce compliance with the reporting timeframes established under Rule G–14 RTRS Procedures would focus their examination for and enforcement of the rule's timing requirements on the consistency of timely reporting and the existence of effective controls to limit late reporting to exceptional circumstances or where reasonable justifications exist for a late trade report, rather than on individual late trade report outliers. Notwithstanding such expectation, where facts and circumstances indicate that an individual late report was intentional or otherwise egregious, or could reasonably be viewed as potentially giving rise to an associated fair practice, fair pricing, best execution or other material regulatory concern under MSRB or Commission rules with respect to that or a related transaction, the regulatory authorities could reasonably determine to take action with respect to such late trade in the examination or enforcement context.

Compliance Tools

The MSRB would continue to provide various compliance tools to assist dealers with compliance and for examining authorities to monitor for compliance. For example, currently, if a trade is reported late, an error message indicating this fact is sent in real-time to the submitter through the Message Portal, through the RTRS Web Portal, and by means of electronic mail. Such error messages are designed to promote dealer awareness of the late report and provide an opportunity to evaluate the reason for lateness and make appropriate adjustments as needed. In addition, on a monthly basis, RTRS produces statistics on dealer performance related to the timely submission of transactions and correction of errors and provides these statistics to dealers as well as to regulators. The MSRB expects to create additional compliance tools in the form of new or modified reports for dealers and examining/enforcement authorities, allowing them to more easily monitor compliance.[53] Such tools would be

[51] The manual trade indicator would be used for regulatory purposes only and would not, under the proposed rule change, be included in the trade data disseminated to the public through the EMMA website and subscription feeds. This information would help inform the MSRB regarding broader trends in the marketplace beyond the specific provisions of the proposed rule change. For example, the use of the manual trade indicator would help identify changes in the prevalence of manual trades as market conditions change or in light of other events or trends having an impact on the municipal securities market.

[52] Late trade designations are currently, and would continue to be, available to regulators and, through the MSRB compliance tool described below in ''Purpose—Proposed Rule Change—Compliance Tools,'' to the dealer submitting the late trade. *See* Section 2.9 of the Specifications for Real-Time Reporting of Municipal Securities Transactions in connection with error codes currently generated by RTRS with respect to late trade reports. The trade data disseminated to the public through the EMMA website and subscription feeds does not currently and would not have appended to it a late report indicator nor an indicator of which deadline was applicable (other than the indicators currently published).

[53] For example, the MSRB currently produces a series of reports for dealers submitting trades to RTRS, including a Dealer Data Quality Report (commonly referred to as a ''report card''). *See* MSRB Real-Time Transaction Reporting System (RTRS) Manual (Nov. 2022), available at *https://www.msrb.org/sites/default/files/RTRSWeb-Users-Manual.pdf.* This report describes a dealer's transaction reporting data with regard to status, match rate, timeliness of reporting, and the number of changes or corrections to reported trade data. For most statistics, the industry rate is also provided for comparison. The Lateness Breakout portion of the report has a category for each type of reporting deadline, showing how many trades were reported

Continued

expected to provide data that would permit a dealer to monitor compliance patterns as well as provide support for the dealer to determine and confirm its relevant trade count for the current and preceding calendar years, including for the purpose, among other things, of assisting dealers to determine whether the exception for dealers with limited trading activity is available.[54] Similarly, through a late trade indicator, data would be available for regulators to determine the applicable trade reporting obligation for each trade and analyze the data to assist in identifying a pattern or practice of late trade reporting, based on the specific facts and circumstances relevant to the particular trade reports.

Technical Amendments

Non-Substantive Amendments

Non-substantive amendments to Rule G–14 RTRS Procedures Section (a)(ii) regroup and renumber its current Sections (A) through (C) to new Sections (A)(1) through (A)(3), renumber current Sections (D) and (E) to new Sections (B)(1) and B(2), and correct a cross-reference in Section (b)(iv) to certain of these Sections to be consistent with such renumbering. In addition, a technical amendment to Rule G–14 RTRS Procedures Section (a)(ii) changes the word ''of'' to ''after'' and omits the word ''within'' in the phrase ''within 15 minutes of Time of Trade'' for clarity and consistency of usage throughout the Rule G–14 RTRS Procedures as amended.

Clarifying Amendments—Special Condition Indicators and Trades on an Invalid RTTM Trade Date

The proposed rule change would make certain clarifying amendments to Rule G–14 RTRS Procedures Section (b)(iv) relating to transactions with special conditions. That Section currently specifically sets forth information regarding certain existing special condition indicators while also referencing the existence of other special condition indicators in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions. The proposed clarifying amendments to Section (b)(iv) of Rule G–14 RTRS Procedures would incorporate into the language thereof reference to all applicable special condition indicators, including the new trade with a manual component indicator and existing special condition indicators previously adopted by the MSRB but that are currently only documented explicitly in the Specifications for Real-Time Reporting of Municipal Securities Transactions.[55] Other than the addition of the new trade with a manual component indicator, the proposed clarifying amendments to this provision would not make any changes to the types or usage of existing special condition indicators.

In addition, Rule G–14 RTRS Procedures Section (a)(iii) would be amended to reflect that, in addition to trades effected outside the hours of the RTRS Business Day, inter-dealer trades may be executed on certain holidays (other than those recognized as non-RTRS Business Days) that are not valid RTTM trade dates (''invalid RTTM trade date''), and in either case such trades are to be reported no later than within 15 minutes after the beginning of the next RTRS Business Day. Such invalid RTTM trade date transactions are already subject to this same next RTRS Business Day reporting requirement.[56] The proposed clarifying amendment to this provision would not make any changes to the circumstances or timing of reporting of such trades.

Proposed Conforming Amendments to Rule G–12 and RTRS Information Facility

Proposed amendments to Rule G–12, on uniform practice, would make conforming changes to Section (f)(i) thereof to require that each transaction effected during the RTRS Business Day shall be submitted for comparison as soon as practicable, but no later than one minute after the Time of Trade unless an exception applies. The proposed rule change would also modify the IF–1 to clarify lateness checking against the applicable reporting deadline(s) provided for in proposed amendments to Rule G–14 RTRS Procedures, as opposed to the current 15-minute requirement.

Effective Date and Implementation

The MSRB intends to provide time for dealers and the MSRB to undertake the programming, process changes and/or vendor arrangements needed to implement the proposed rule change, as well as to provide an adequate testing period for dealers and subscribers that interface with RTRS or third parties involved in the submission and/or subscription process (including but not limited to DTCC, its RTTM system, other dealers, or other key utilities or vendors). Thus, if the proposed rule change is approved by the Commission, the MSRB would announce an effective date (for example, approximately within 18 months from such Commission approval) in a notice published on the MSRB website. Such effective date would be intended to maintain implementation of the proposed rule change on substantially the same implementation timeframe as the 2024 FINRA Proposed Rule Change.

2. Statutory Basis

Section 15B(b)(2) of the Exchange Act[57] provides that the MSRB shall propose and adopt rules to effect the purposes of the Exchange Act with respect to, among other matters, transactions in municipal securities effected by dealers. Section 15B(b)(2)(C) of the Exchange Act[58] further provides that the MSRB's rules shall 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 municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products and, in general, to protect investors, municipal entities, obligated persons and the public interest.

The MSRB believes the proposed rule change, consisting of proposed amendments to Rule G–14 RTRS Procedures under Rule G–14 as well as conforming proposed amendments to Rule G–12(f)(i) and IF–1, is consistent with Section 15B(b)(2)(C) of the

timely and late relative to the applicable deadline. Such reports are available in both single-month and twelve-month formats.

[54] *See* proposed Supplementary Material .01(a), which would require a dealer relying on the exception for dealers with limited trading activity to confirm on an annual basis that it meets the criteria for a dealer with limited trading activity. Where a dealer resubmits an RTTM cancel under proposed redesignated Rule G–14 RTRS Procedures Sections (a)(ii)(B)(2), for purposes of avoiding double counting, only the original trade, if not otherwise excepted, would count for purposes of this exception and not the resubmitted trade.

[55] Each of these special condition indicators were formally adopted through MSRB rulemaking and also appear in various interpretive or other regulatory materials. *See generally* Section 4.3.2 and Appendix B.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions. *See also* Exchange Act Release No. 49902 (June 22, 2004), 69 FR 38925 (June 29, 2004), File No. SR–MSRB–2004–02; Exchange Act Release No. 55957 (June 26, 2007), 72 FR 36532 (July 3, 2007), File No. SR–MSRB–2007–01; Exchange Act Release No. 74564 (Mar. 23, 2015), 80 FR 16466 (Mar. 27, 2015), File No. SR–MSRB–2015–02.

[56] *See* Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions; Exchange Act Release No. 55957 (June 26, 2007), 72 FR 36532 (July 3, 2007), File No. SR–MSRB–2007–01.

[57] 15 U.S.C. 78*o*–4(b)(2).

[58] 15 U.S.C. 78*o*–4(b)(2)(C).

Exchange Act [59] because it would promote just and equitable principles of trade, foster cooperation and coordination with personnel engaged in regulating and facilitating transactions in municipal securities, remove impediments to a free and open market in municipal securities and generally protect investors and the public interest. The proposed rule change would promote just and equitable principles of trade because it would reduce information asymmetry between market professionals (such as dealers and institutional investors) and retail investors by ensuring increased access to more timely information about executed municipal securities transactions for all investors. Currently, market professionals may in some circumstances have better or more rapid access to information about trade prices through market venues to which retail investors do not have access, and the reduction in the timeframe for trade reporting would shorten or eliminate the period during which any such asymmetry in access to such information may exist.

The proposed rule change would foster cooperation and coordination with persons engaged in regulating and processing information, facilitating a consistent standard for trade reporting across many fixed income products, including municipal securities. As noted above, the proposed rule change was developed in close coordination with FINRA, which is proposing a similar shortened trade reporting requirement for many TRACE-eligible securities. Fostering a consistent standard across classes of securities would facilitate greater and more efficient compliance among MSRB-registered dealers, the majority of which also transact in other fixed income securities that are subject to FINRA's regulatory authority. Consistent trade reporting requirements reduce the risk of potential confusion and may reduce compliance burdens resulting from inconsistent obligations and standards for different classes of securities. A shortened trade reporting time, as facilitated by the proposed rule change, would promote regulatory consistency, reducing potential errors caused by market participants' imperfect application of differing standards when executing and reporting transactions in municipal securities.

The proposed rule change would remove impediments to a free and open market in municipal securities by making publicly available more timely information about the market for and the price at which municipal transactions are executed, which is central to fairly priced municipal securities and a dealer's ability to make informed quotations. The MSRB believes that the proposed rule change would promote investor protection and the public interest through increased market transparency by reducing the timeframe for trade reporting, providing the market with more efficient pricing information, which would enhance investor confidence in the market. At the same time, the exceptions balance potential burdens for dealers with limited trading activity in municipal securities by permitting such dealers to report trades as soon as practicable but not later than the currently applicable 15-minute reporting requirement. The proposed rule change also addresses potential burdens faced by dealers engaged in complex transactions, including voice/electronically negotiated transactions involving a manual post-transaction component, by permitting a phase-in period for a gradual implementation. This approach would enable market participants to achieve compliance with the shortened reporting target over a period of time while not adversely affecting their ability to execute such transactions consistent with applicable MSRB or Commission rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act [60] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB does not believe the proposed rule change to amend Rule G–14 RTRS Procedures under Rule G–14, Rule G–12(f)(i) and IF–1would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The proposed rule change would apply the new one-minute reporting timeframe to all transactions in municipal securities currently subject to the 15-minute reporting requirement and would provide two new exceptions designed to balance the benefits of timelier reporting with the potential costs of disrupting markets from transactions most likely to realize a negative impact by the shortening of the timeframe and disproportionally impacting less active and smaller dealers.[61]

The proposed rule change is intended to provide more immediate post-trade transparency in the municipal securities market and is consistent with the purposes of RTRS. In the past, the municipal securities market has sometimes been associated with information opacity and low trading volume for a majority of securities with relatively few securities that trade compared to the number of outstanding securities.[62] Information opacity likely affects retail investors more than institutional investors and other market participants; for example, pre-trade quotes are not widely available in the municipal securities market, especially for retail investors who may not have the access and may be more reliant on trade data. Furthermore, with far fewer trades in municipal securities when compared to equity securities, Treasury and corporate bonds, each additional data point from post trade reporting in municipal securities would potentially be more valuable to investors and other market participants than a data point from these other markets. The reduction in this opacity resulting from the proposed rule change would make more timely information available to all market participants and help level the playing field among retail investors, institutional investors, and dealers, thereby potentially promoting competition in the market for municipal securities.

Therefore, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act for the following reasons. In making this determination, the MSRB staff was guided by the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking.[63] In accordance with this policy, the MSRB evaluated the potential impacts on competition of the proposed rule change. The proposed rule change in trade reporting time to one minute after Time of Trade is intended to better align with the actual time that it takes a dealer to report most transactions and provides more immediate transparency to the market

[59] *Id.*

[60] *Id.*

[61] *See supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement'' for a discussion of the proposed two new exceptions.

[62] Based on MSRB's trade data, approximately one percent of the outstanding municipal securities trade on a given day.

[63] Policy on the Use of Economic Analysis in MSRB Rulemaking is available at *https://www.msrb.org/Policy-Use-Economic-Analysis-MSRB-Rulemaking.* In evaluating whether there was a burden on competition, the MSRB was guided by its principles that require the MSRB to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

by reducing the reporting time for the remaining transactions to as soon as practicable but no later than 15 minutes after the Time of Trade standard for trades by dealers with limited trading activity and to a deadline that would ultimately be shortened to five minutes after the Time of Trade for trades with a manual component.

The MSRB previously shortened the trade reporting timeframe from the end of day to 15 minutes from the Time of Trade in January 2005 with the creation of RTRS. Since the 2005 change, the MSRB's analysis shows that most trades are indeed reported much sooner than the current 15-minute trade reporting deadline, potentially due at least in part to the advancement in technology. Specifically, as illustrated in Table 1 below, approximately 73.7 percent of trades in 2022 were reported within one minute after a trade execution, with another approximately 23.3 percent of trades reported between one minute and five minutes after the Time of Trade.[64] As presently reported, due in part to technological advancements, most trades already satisfy a shorter than 15-minute reporting requirement. A shorter reporting timeframe is intended to provide more immediate transparency to a market that historically has been associated with low trading volume for a majority of Committee on Uniform Securities Identification Procedures (''CUSIP'') numbers, relatively few securities that trade compared to the number of outstanding securities and sometimes has been associated with information opacity.

Trade Reporting Analysis

Table 1 summarizes the MSRB's analysis comparing Time of Trade to trade reporting time for all trades required to be reported within 15 minutes in 2022.[65] Out of all reportable municipal securities trades[66] that are not subject to another end of day reporting exception or a post-trade day reporting exception, approximately 73.7 percent were reported within one minute, while 97.0 percent were reported within five minutes and 98.9 percent were reported in 15 minutes or less.[67] The MSRB observed a noticeable difference in the speed of trade reporting by different trade size groups, with the reporting time increasing with trade size. While 76.2 percent of trades with trade size of $100,000 par value or less (approximately 84.2 percent of all trades) were reported within one minute, only 38.4 percent of trades with trade size between $1,000,000 and $5,000,000 par value and 23.1 percent of trades with trade size above $5,000,000 par value were reported within one minute. A possible explanation is that larger institutional-sized trades are more likely to be executed via non-electronic means and may rely upon more manual processing steps.[68] However, smaller-sized trades are more likely executed and processed electronically, which could facilitate faster trade reporting.

Table 1. Trade Report Time by Trade Size – Cumulative Percentages

January 2022 to December 2022

Difference Between Execution and Reported Time	All Trades	$100,000 or Less	> $100,000 - $1,000,000	> $1,000,000 - $5,000,000	>$5,000,000
15 Seconds	24.9%	26.5%	18.1%	7.9%	3.6%
30 Seconds	49.5%	51.8%	40.8%	21.6%	11.5%
1 Minute	**73.7%**	**76.2%**	**65.5%**	**38.4%**	**23.1%**
2 Minutes	88.5%	90.2%	83.6%	62.4%	46.7%
3 Minutes	91.9%	93.0%	89.1%	73.4%	60.7%
5 Minutes	97.0%	97.7%	95.4%	85.3%	76.0%
10 Minutes	98.6%	98.9%	97.8%	93.8%	89.0%
15 Minutes	98.9%	99.2%	98.3%	95.7%	91.9%
30 Minutes	99.5%	99.6%	99.1%	97.5%	94.0%
1 Hour	99.5%	99.6%	99.2%	97.7%	94.6%
> 1 Hour	100.0%	100.0%	100.0%	100.0%	100.0%
Market Share of Eligible Trades	**100.0%**	**84.2%**	**13.1%**	**2.1%**	**0.6%**

Table 2 illustrates a variation in trade reporting time in 2022 between dealers with 1,800 trades or more annually during both prior two calendar years (''Active Dealers''), and dealers with less than 1,800 trades annually during at least one of the prior two calendar years (''Dealers with Limited Trading

[64] The analysis in this rule filing only includes trades reportable within 15 minutes and excludes trades that are exempt from the current 15-minute reporting time including, for example, trades flagged as being executed at the List Offering or Takedown Transactions, trades in short-term instruments maturing in nine months or less, Auction Rate Securities, Variable Rate Demand Obligations, trades in commercial paper, as well as trades ''away from market,'' among other exceptions. *See also* Rule G–14 RTRS Procedures Sections (a)(ii)(A) and (B). For purposes of the analysis in this section, if an initially reported trade was corrected later, the later timestamp was used for calculating the trade reporting time more conservatively. All figures are approximate.

[65] In 2022, RTRS had the highest number of trades on record since its implementation in 2005. The record is likely attributable to interest rate rallying and volatility throughout the year, though the amount of par value traded was not a record high. The heightened level of trading persisted through 2023, with the number of trades reported to RTRS exceeding the previous record in 2022.

[66] *See* proposed Rule G–14 RTRS Procedures Sections (a)(ii)(A) and (B) for lists of existing end of trade day reporting exceptions and post-trade day reporting exceptions.

[67] By comparison, in 2021, a year with much lower overall trading volume than 2022, 76.7 percent of trades subject to the 15-minute standard were reported within one minute, 97.3 percent of such trades were reported within five minutes and 99.5 percent of trades were reported within 15 minutes.

[68] MSRB staff conducted oral interviews with dealers and data providers in the fall of 2022 and the winter and spring of 2023 and was informed that larger institutional-sized trades are more likely to be executed via negotiations and involve manual processes.

Activity'').[69] A threshold of 1,800 trades a year was selected to demonstrate that Dealers with Limited Trading Activity as a whole had a relatively small impact on the entire market and transparency, with approximately 98.5 percent of trades in 2022 conducted by Active Dealers collectively and only 1.5 percent of trades conducted by all Dealers with Limited Trading Activity. When calculating the market share by par value traded, Active Dealers conducted 98.2 percent of par value traded in 2022 while Dealers with Limited Trading Activity conducted only 1.8 percent of par value traded.[70] In 2022, out of 647 dealers conducting at least one transaction in municipal securities 474 were Dealers with Limited Trading Activity and 173 were Active Dealers.[71] This difference in trade reporting time was pronounced for the one-minute trade reporting percentages where Active Dealers had 77.2 percent of trades reported within one minute while only 47.5 percent of trades conducted by Dealers with Limited Trading Activity were reported within one minute.

Table 2. Trade Reporting Time by Level of Dealer Activity

January 2022 to December 2022

	Percent of Trades Reported Within One Minute	Percent of Trades Reported Within Ten Minute	Market Share of Trades	Market Share of Par Value Traded
Firms that accounted for 1,800 trades or more (Active Dealers)	77.2%	99.3%	98.5%	98.2%
Firms that accounted for less than 1,800 trades (Dealers with Limited Trading Activity)	47.5%	96.8%	1.5%	1.8%

Benefits, Costs, and Effect on Competition

The MSRB considers the likely costs and benefits of a proposed rule change when the proposal is fully implemented against the context of the economic baselines. The baseline is the current iteration of Rule G–14 RTRS Procedures (a)(ii) that requires transactions to be reported within 15 minutes after the Time of Trade with limited exceptions, while the future state would be following the conclusion of the second calendar year from the effective date of the proposed rule change, with the full implementation of the gradual reduction in reporting timeframe for trades with a manual component.

In performing this economic analysis and related cost-benefit estimates, the MSRB has made a number of assumptions based on 2022 RTRS data as explained in more detail below. For instance, there are few publicly available sources of information about revenue and expense data for relevant business lines of a dealer, especially in relation to potential spending on acquiring or upgrading technology and infrastructure for some dealers. The effort is further hampered by the fact that some dealers are privately-owned, who are not required to disclose business operation data in public filings. Therefore, the MSRB conducted interviews with select dealers and vendors who provide electronic trade reporting services as well as dealer subscribers of these services to gauge the likely impact from the proposed rule change.[72] The MSRB believes the analysis provides a useful projection on the scale of benefits and costs relative to the current baseline irrespective of whether an assumption changes the absolute estimated costs and benefits.

Benefits

The primary benefit of the proposed rule change on accelerated trade reporting would be improved transparency in the municipal securities market. Historically, the municipal securities market has been considered less liquid and more opaque when compared to other securities markets, with only about 1 percent of all municipal securities trading on a given trading day, and pre-trade quotes are not widely available to all market participants, especially retail investors who may not pay for vendor pricing tools and may be more reliant on trade data.[73] Therefore, post trade data is important information available to all market participants, including particularly to retail investors and the market professionals that service retail accounts. By implementing the proposed rule change, investors would receive greater advantages on trade pricing information through the reporting of more contemporaneous transactions.[74] This emphasis on contemporaneous trades as opposed to distant trades would help ensure that the pricing information remains vital, potentially decreasing trading costs and increasing liquidity. In addition, since only about 1 percent of municipal securities trade on a given trading day,

[69] *See infra* ''Self-Regulatory Organization's Statement on Burden on Competition—Trade Reporting Analysis'' in Table 2.

[70] The proportion of trades in municipal securities conducted by Dealers with Limited Trading Activity is aligned with the proportion of aggregate trades conducted by dealers with limited trading volume in TRACE-eligible securities subject to the 2024 FINRA Proposed Rule Change when using FINRA's annual transactions threshold. *See supra* n.30.

[71] While low in terms of the trading volume, these Dealers with Limited Trading Activity may still serve many underserved investors, especially retail and institutional investors with a regional focus.

[72] *See supra* n.68.

[73] *See* Wu, Simon Z., John Bagley and Marcelo Vieira, ''Analysis of Municipal Securities Pre-Trade Data from Alternative Trading Systems,'' Research Paper, Municipal Securities Rulemaking Board, October 2018; Government Accountability Office (''GAO''), ''Municipal Securities: Overview of Market Structure, Pricing, and Regulation,'' Report to Congressional Committees, January 2012, page 6; Green, Richard C., Burton Hollifield, and Norman Schürhoff. ''Financial intermediation and the costs of trading in an opaque market.'' The Review of Financial Studies 20.2 (2007): 275–314.

[74] As an illustration, in its 2022 Request for Comment, the MSRB's economic analysis showed that out of the universe of 251,635 ''analyzed trades'' with same-CUSIP-number-matched trades in 2021, where a matched trade was executed before the analyzed trade's execution but was reported after the analyzed trade's execution, approximately 27.9 percent of those analyzed trades had at least one matched trade executed more than a minute before the analyzed trade's execution. This suggests those analyzed trades would have benefited from the matched trades' execution information if matched trades were required to be reported no later than one minute after their execution times.

information on trades in other comparable municipal securities would also be valuable in pricing a security. Lowering the reporting time would make more contemporaneous trades in comparable securities transparent for other transactions.[75] Finally, with far fewer trades in municipal securities when compared to equity securities, Treasury and corporate bonds, each additional data point from post trade reporting in municipal securities would potentially be more valuable to investors and other market participants than a data point from these other markets. According to established economic literature, investors, especially retail investors, benefit from transparency (more and/or better information) by enhancing their negotiation power with dealers as well as reducing dealer's own search and intermediation costs, therefore reducing customer trades' transaction costs, also known as bid-ask spread or effective spread. The MSRB believes additional data points from more contemporaneous trades in the same and/or comparable securities would increase an investor's negotiating power. Specifically, regarding trade reporting time, two research papers scrutinized the transition in 2005 from reporting trades at the end of a trading day to 15 minutes after trade execution. Both studies revealed a statistically significant decrease in the average effective spreads for customer trades. When comparing the period before and the period after January 2005, the reduction in average customer trade effective spread ranged between 11 to 28 basis points, all else being equal.[76] In addition, more timely reporting has also been shown to increase dealer market-making activities in the municipal markets, potentially enhancing market liquidity.[77]

Recent MSRB analyses show that effective spreads for customer trades continued to decline in the last decade.[78] However, while the difference in effective spreads between smaller retail-sized customer trades and larger institutional-sized customer trades shrank over the past decade, the shrinkage has stopped, and the gap may have started to widen again since early 2022.[79] Therefore, as of September 2023, retail-sized customer trades continue to have significantly higher effective spreads than institutional-sized customer trades as shown in Chart 1, about three times as large.[80]

[75] A 2012 report issued by the GAO stated ''Broker-dealers we spoke with said that the price of a recently reported interdealer trade for a security was a particularly good indication of its value for that segment of the market. However, if a security has not traded recently, they said they instead look for recent trades in comparable securities.'' *See* GAO, ''Municipal Securities: Overview of Market Structure, Pricing, and Regulation,'' Report to Congressional Committees, January 2012, page 12.

[76] *See* Sirri, Erik, ''Report on Secondary Market Trading in the Municipal Securities Market,'' Research Paper, Municipal Securities Rulemaking Board, July 2014, and Chalmers, John, Liu, Yu (Steve) and Wang, Z. Jay, ''The Difference a Day Makes: Timely Disclosure and Trading Efficiency in the Muni Market,'' Journal of Financial Economics, 2021. Sirri (2014) estimated that following the implementation of RTRS in January 2005, the average customer trade spread was reduced, all other relevant factors being equal, by 11 basis points within the first six-month period and up to 20 basis points within the one-year period. Chalmers, Wang and Liu (2021) found that dealer markups across all trade sizes declined by 28 basis points (14 percent reduction) in a ten-month period (March 2005 through December 2005). The authors concluded that the improved timeliness of the market resulted in large reductions in the costs of trading municipal bonds.

[77] As indicated by an increase in the overnight and over-the-week dealer capital committed to inventory, an increase in the number of dealers involved in completing a round-trip transaction, and more round-trip transactions that involve inventory taking. *See* Erik Sirri, Report on Secondary Market Trading in the Municipal Securities Market, July 2014 (Research Paper, Municipal Securities Rulemaking Board); John Chalmers, Yu (Steve) Liu, & Z. Jay Wang, The Difference a Day Makes: Timely Disclosure and Trading Efficiency in the Muni Market, 139(1) Journal of Financial Economics, 313–335 (2021).

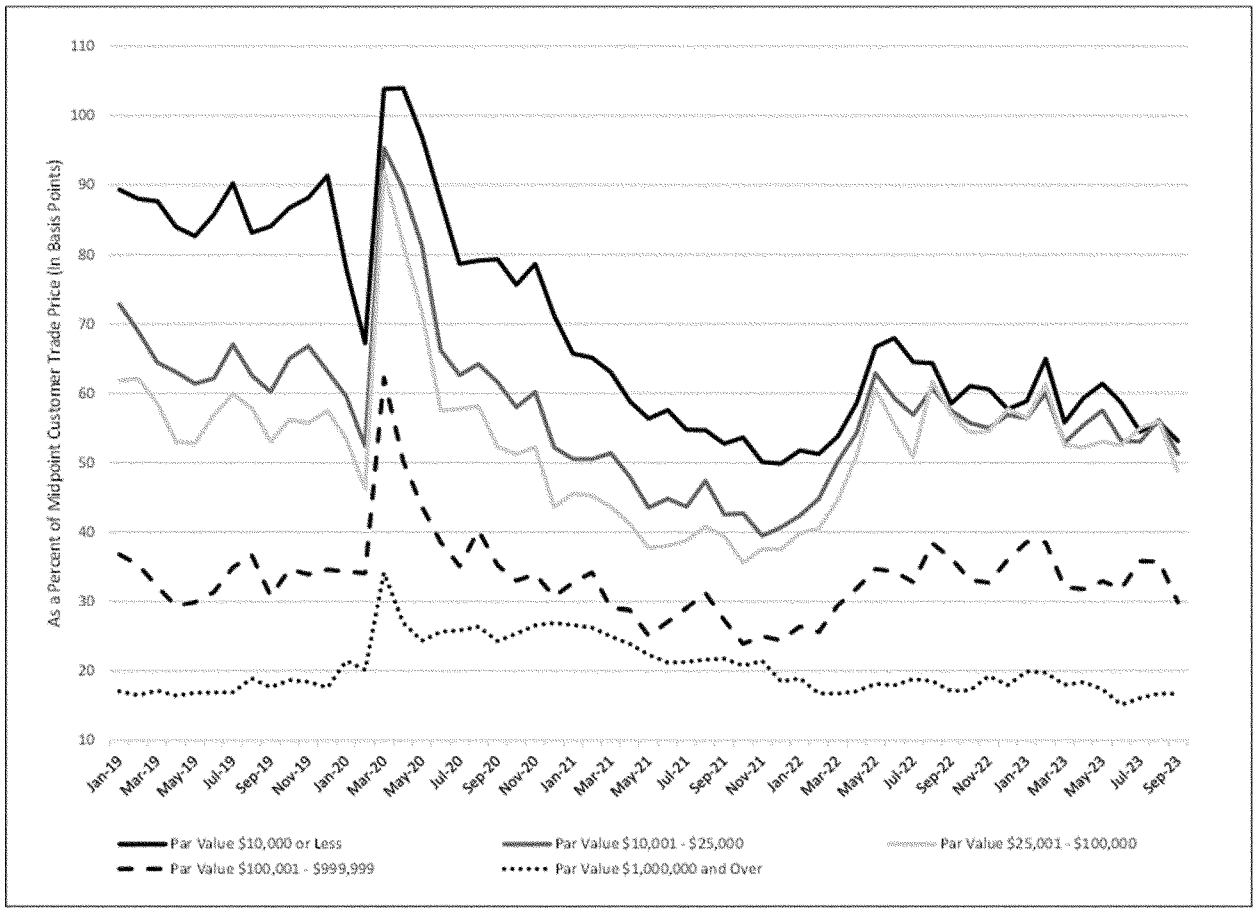
[78] *See* Wu, Simon Z., ''Transaction Costs for Customer Trades in the Municipal Bond Market: What is Driving the Decline?'' Research Paper, Municipal Securities Rulemaking Board, July 2018, Page 15; and Wu, Simon Z., and Ostroy, Nicholas J., ''What Has Driven the Surge in Transaction Costs for Municipal Securities Investors Since 2022?'' Research Paper, Municipal Securities Rulemaking Board, August 2023.

[79] Wu and Ostroy (2023). The reduction was mostly due to the steadily declining effective spreads for retail-sized customer trades, as institutional-sized customer trades (par value more than $1,000,000) had a relatively stable level of effective spreads between 2005 and 2023.

[80] *Id.*

Chart 1. Effective Spread for Fixed-Rate Municipal Securities Customer Trades

January 2019 – September 2023



Based on available economic literature and the MSRB's own analysis of trade data, the MSRB believes that the proposed rule change would further reduce customer trade effective spreads due to the benefit of more immediate transparency, especially for retail-sized trades. The MSRB acknowledges the difference in the potential impact, due to the different scale of the changes, between the launch of RTRS in January 2005 with the introduction of a 15-minute reporting window in place of end-of-day reporting, on the one hand, and the proposed shortening of the trade reporting requirement from 15 minutes to one minute, on the other hand. Nevertheless, while the anticipated positive effect of the proposed one-minute trade reporting with two new exceptions may not match the magnitude of the 2005 RTRS transition, it is expected to yield valuable advantages for investors through the inclusion of more contemporaneous trade data points in the same and/or comparable securities. This holds particularly true for retail investors, who have historically paid higher effective spreads than institutional investors and derived greater benefits from post-trade transparency compared to institutional investors.[81] For illustration purposes, hypothetically if a shortening of trade reporting time to one minute for Active Dealers (except for manual trades) would reduce the effective spread by an average of five basis points[82] for customer trades with $1 million or less par value, this would result in the annual savings (benefits) for investors of approximately $126.2 million based on the 2022 trading volume (see Hypothetical Scenario 1 in Table 3).[83] Table 3 also shows a more conservative scenario when limiting the hypothetical effective spread reduction to a trade size of $100,000 par value or less only, commonly known as a proxy for retail-sized trades. A reduction of five basis points in effective spreads from the proposed rule change applicable to these trades would result in the annual savings of approximately $49 million to retail investors (see

[81] *Id.*

[82] To be conservative, the MSRB uses five basis points as an illustration, where a five-basis point reduction in price value of a $100 par value bond is equivalent to $0.50 per bond. This estimate is less than half of the estimated lower-bound reduction from the 2005 changeover from end-of-day trade reporting to 15 minutes from Time of Trade reporting, and is only applicable to non-institutional-sized customer trades (either sub-$1,000,000 par value or $100,000 or lower par value customer trades). No change in effective spread for other customer trades is included in the analysis, as larger-size institutional customers are assumed to be sophisticated and already have pricing information.

[83] In 2022, $504.8 billion annual par value traded from all customer purchase and sell trades with trade size below $1,000,000 par value × 0.05 percent/2 = $126.2 million. Since the five basis points are the difference between the average customer purchase and customer sell trades, when measuring each customer purchase or customer sell trade, the amount is divided by two.

Hypothetical Scenario 2 in Table 3).[84] On the other hand, while the MSRB believes dealers would earn less from investors as a result of narrowing effective spreads, the shortfall would be partially offset by gains in market efficiency, potential reduction in dealer search and intermediation costs, and potentially increased revenue from higher customer trading activity as a result of lower transaction costs. This is in line with the economic theory on the law of demand that a reduction in price would generally encourage more purchasing by consumers, all else being equal.[85] In the case of secondary market trading, the expectation is that a reduction in trading costs would encourage more trading by existing investors and/or bring in new investors to the municipal securities market over the long term. The MSRB assumes a reduction of five basis points in the effective spreads for the $1 million par value or lower customer trades would generate an additional 0.2 percent in total customer trading volume for that trade size group, while a reduction of five basis points in the effective spreads for the $100,000 par value or lower customer trades would generate an additional 0.2 percent in total customer trading volume for that trade size group.[86] The MSRB therefore estimates dealers would gain between approximately $1 million to $3 million from projected additional annual customer trading volume.

Table 3. Illustration of Hypothetical Benefit Based on 2022 Trading Volume

Basis Points in Price

	Benefit - Investors		Benefit - Dealers
	Reduction in Effective Spread (in Basis Points)	**Annual Effective Spread Savings for Investors**	**Gain from Additional Customer Trading Volume**
2005: 15-Minute Trade Reporting			
Benefit for All Trades	11 to 28		
2023 Proposal: One-Minute Trade Reporting			
Hypothetical Scenario 1 - Benefit for Sub-$1,000,000 Par Value Trades Only	5.0	$ 126,472,000	$ 2,954,000
Hypothetical Scenario 2 - Benefit for $100,000 Par Value Trades or Lower Only	5.0	$ 49,044,000	$ 981,000

While five basis points are used as an illustration in Table 3, even if the reduction in effective spread was only half of the amount, or 2.5 basis points, the total annual savings would still amount to between $24.5 million and $63.1 million approximately.

In addition to investors benefiting from more immediate market transparency, other market participants would also benefit from the proposed rule change, including underwriters and issuers who determine evaluated pricing of a new issuance, dealers in the primary and secondary markets who participate in competitive bidding activities, and yield curve providers that rely upon market transactions to update curves or to supply intra-day price and yield movement for the market.

Lastly, any trade that meets the definition of a manual trade would be required to append a new trade indicator to such trade when reported to the MSRB, regardless of when the trade is reported. This trade indicator would help the MSRB identify the extent to which the market still operates manually and could help determine whether the proposed gradual reduction in timeframes proposed would be feasible to maintain or to continue reducing in the future.

Costs

The MSRB acknowledges that dealers would likely incur additional costs, relative to the current state, to meet the new one-minute transaction reporting time of one minute outlined in the proposed amendments to Rule G–14 RTRS Procedures though the compliance costs would be mitigated by the fact that nearly 73.7 percent of all trades were already reported within one minute of an execution in 2022. These additional costs would likely include: (a) one time or upfront costs (*e.g.,* setting up and/or revising policies and procedures, education and training and implementing the newly required manual trades flag); (b) ongoing costs related to subscription(s) to electronic trade reporting technologies to speed up the trade reporting process for some Active Dealers; and (c) other ongoing costs related to ensuring compliance with the new proposed requirements.

Upfront Costs

For the upfront costs, it is possible dealers may need to seek appropriate advice of in-house or outside legal and compliance professionals to revise policies and procedures in compliance with the proposed amendments to Rule G–14 RTRS Procedures. Dealers may also incur upfront costs related to education and/or standards of training in preparation for the implementation of these proposed amendments, as well as establishing the newly required manual trades flag. The MSRB believes the upfront costs as related to updating policies and procedures, training and education would be relatively minor, perhaps about $6,720 for Dealers with Limited Trading Activity and up to $11,200 for Active Dealers for a total of

[84] In 2022, $196.1 billion annual par value traded from all customer trades with trade size at $100,000 par value or less × 0.05 percent/2 = $49 million.

[85] Davenant, Charles, An Essay upon the Probable Methods of Making People Gainers in the Balance of Trade (London: James Knapton, 1699).

[86] The 0.2 percent volume increase would be about half of the lower-bound estimate for the 2005 change over (*see* Chalmers, Wang and Liu, 2021).

about $5.1 million (see Table 3).[87] In addition, there would be a one-time upfront cost for software or compliance system upgrade to flag manual trades and to reprogram the system to comply with the shorter reporting timeframe, though the amount would depend on how this new requirement is implemented by the industry. While the MSRB does not have sufficient data and information presently to estimate the cost, the MSRB believes the upfront cost for implementing the manual trade flag would likely be more substantial than the other upfront cost components.

Ongoing Costs: Annual Technology Subscription

By comparison, the annual ongoing technology subscription costs for electronic trade reporting would likely be more significant for some Active Dealers, as these dealers may need to obtain assistance from outside vendors or increase in-house programming costs. It should be noted that some dealers may be able to fulfill the new trade reporting time requirement without any upgrade to their technology. While the MSRB is not aware of any evidence that dealers are intentionally delaying trade reporting, the current Rule G–14 provides a 15-minute reporting window without the ''as soon as practicable'' requirement. As a result, some dealers may not have reported their trades as soon as practicable in the absence of a regulatory obligation. In addition, it is possible that, instead of upgrading existing technologies, some dealers, especially those with relatively few trades in municipal securities, may augment their workforce to ensure a shorter reporting lag after a trade execution. Finally, dealers executing voice trades and secondary market trades in newly issued securities may not be able to speed up the trade reporting process due to the manual nature of these trades, even with the electronic trade reporting technology in place.[88]

For the ongoing cost estimate, the MSRB assumes that Active Dealers would not need to acquire electronic trade reporting technology if 90+ percent of the dealer's trades are currently reported between one and two minutes after the Time of Trade,[89] as those dealers are assumed to be able to report the trades within the proposed one-minute trade reporting requirement without resorting to an additional technology subscription. However, if a dealer reports 90+ percent of trades by more than two minutes, the MSRB assumes the dealer would need to upgrade its technology to achieve the one-minute requirement. The MSRB believes the proposed rule change would provide an incentive to adjust internal policies and procedures or to improve reporting time without resorting to additional technology subscription, especially with the new one-minute trade reporting requirement for non-excepted trades as well as the new ''as soon as practicable'' requirement that harmonizes with the current analogous FINRA rules. As to the MSRB's usage of the 90+ percent threshold as opposed to a 100 percent threshold, the proposed rule change provides an exception for manual trades for these Active Dealers, meaning that a 100 percent compliance rate with the baseline one-minute timeframe may not be required. The MSRB believes that many of the trades that took longer than one minute to report likely had a manual component; therefore, it may be that a threshold lower than the 90 percent threshold would still satisfy the new requirements in the proposed rule change, providing Active Dealers additional time to report by using the new exception for manual trades. However, because the MSRB does not know the actual share of manual trades for each dealer at this time, to be aggressive (*i.e.,* conservative) in estimating the costs, the MSRB includes these Active Dealers in the ongoing technology subscription cost calculation.

Chart 2 below illustrates the estimated technology subscription cost of acquiring the electronic trade reporting technology for these dealers. From the industry outreach effort, the MSRB learned it would cost a dealer approximately up to an additional $60,000 annually, which includes a bundle of services in addition to the electronic trade reporting.[90] The MSRB believes, however, this cost estimate may be on the high side because: (1) dealers may not need to purchase the bundle simply to speed up the trade reporting depending on their existing subscription services; [91] and (2) some dealers may have more than 10 percent of their trades having a manual component, and since the proposed rule change would use a phase-in period for these trades, with the requirement of as soon as practicable but no later than five minutes after the Time of Trade after the second year, it may reduce the need or the scale to pay for the technology subscription costs. Furthermore, since the requirement for the one-minute trade reporting would likely be applicable to other TRACE-eligible fixed-income securities such as corporate bonds under the 2024 FINRA Proposed Rule Change, dealers that trade both municipal securities and corporate bonds may only need to pay the subscription cost once, or at least not need to pay double the amount. Still, to be aggressive in the cost estimate, the MSRB would use the $60,000 as the minimum annual cost for dealers who would need the new technology subscription. In addition, it is possible that some dealers, especially larger dealers, may need more than one vendor for automated trade reporting when executing orders on multiple

[87] The hourly rate data was gathered from the Commission's Amendments to Exchange Act Rule 3b-16. *See* Exchange Act Release No. 94062 (Sep. 20, 2022), 17 CFR parts 232, 240, 242, 249 (Jan. 26, 2022) (File No. S7–02–22), p. 477 n.1102 (citing the original source of the data from SIFMA Management & Professional Earnings in the Securities Industry—2013. The data reflects the 2023 hourly rate level after adjusting for the annual wage inflation between 2013 and 2023, using the Federal Reserve Bank of St. Louis Employment Cost Index: Wages and Salaries: Private Industry Workers (available at: *https://fred.stlouisfed.org/series/ECIWAG*). The MSRB uses a blended hourly rate of $560 for tasks that could be performed by in-house attorneys, outside counsel, compliance managers and chief compliance managers, and estimates a total of 12 hours for Dealers with Limited Trading Activity to update policies and procedures, and implement training and education, and 20 hours for Active Dealers. As shown in Table 4, the one-time upfront costs are estimated to be $5.1 million ($11,200 × 173 + $6,720 × 474 = $5.123 million).

[88] For example, in 2022, approximately 59 percent of the secondary market transactions executed within the first three days of a new issuance were reported within one minute, as compared to 77 percent of other secondary market trades. This may be largely due to the additional time involved in setting up a new CUSIP for the secondary market trading. The MSRB anticipates that such trades requiring manual intervention would be subject to the phased-in reporting requirement down to five minutes.

[89] For each dealer, the MSRB calculated the nearest minute(s) (rounded up) to report at least 90 percent of its trades in 2022.

[90] Some comment letters also cited Bloomberg's Trade Order Management Solutions (''TOMS'') system, which would cost $250,000 per year. *See* Letter from Matthew Kamler, President, Sanderlin Securities LLC, dated September 27, 2022, at 1. Another commenter estimated the cost at $500,000 per year. *See* Letter from John Isaak, Senior Vice President, Isaak Bond Investments, dated August 16, 2022, at 1. The MSRB understands that TOMS can be used for many purposes, such as sales, trading, risk management, compliance and operations, and not just for electronic trade reporting. TOMS can also be used for many fixed-income products and not just for municipal securities. *See https://www.bloomberg.com/professional/product/trade-order-management-solutions/.* Thus, the cost associated with TOMS would generally appropriately be allocated among the various uses that a dealer is likely to make of it.

[91] For example, one vendor informed the MSRB that it charges up to $1,000 per month for straight-through processing of trades, or $12,000 annually. Some other dealers mentioned $2,000 monthly, or about $24,000 annually to incorporate electronic trade reporting.

electronic platforms. Therefore, the MSRB estimates, among Active Dealers who would need new technology subscription to comply with the proposed rule change, such Active Dealers would incur approximately $100,000 annually to adopt the electronic trade reporting to comply with the proposed rule change,[92] while a dealer with less than 12,000 trades annually[93] would incur $60,000 annually.[94]

Chart 2. Diagram for Determining Estimated Technology Subscription Cost for Active Dealers

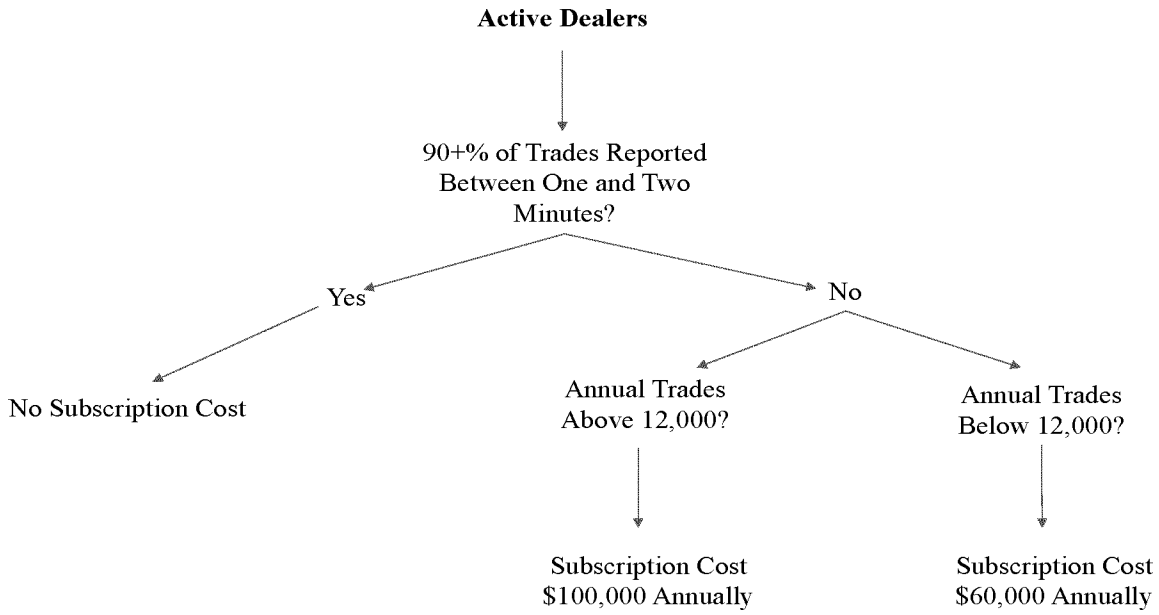


Table 4 provides an estimated total cost of approximately $5.1 million for the one-time policies and procedures revision for all 647 dealers. As to the annual ongoing costs, MSRB staff estimated a total of $6.6 million for the annual technology subscription for the 88 Active Dealers who would need the subscription.

Table 4. Estimate of Upfront and Ongoing Costs Based on 2022 Trading Volume

	Upfront Cost - Policies and Procedures	Annual Ongoing Costs - Technology Subscription
One-Minute Reporting for Active Dealers and 15-Minute Reporting for Dealers with Limited Trading Activity	$ 5,123,000	$ 6,560,000

Note: There would also be upfront costs for system upgrade to flag manual trades as well as ongoing costs for ensuring compliance. The MSRB cannot provide an estimate for these costs presently because of insufficient information.

Other Ongoing Compliance Costs

The MSRB anticipates ongoing costs of ensuring the compliance of relevant trades to be reported within one minute, and manual trades to be reported within the timeframes as proposed during and after the phase-in period, with a new trade indictor for such trades. Comparatively speaking, these ongoing compliance costs would be relatively minor and may not significantly exceed the costs in the current baseline, as all dealers should already have compliance programs in place in relation to the current trade reporting requirement.

[92] The MSRB assumes these dealers would need a second vendor, but instead of doubling the amount from $60,000 to $120,000, the MSRB estimates the amount to be approximately $100,000 assuming there would be some efficiency gain.

[93] A market share of between 0.01 percent and 0.1 percent based on the 2022 data.

[94] Of the 173 Active Dealers, 82 dealers had 12,000 trades or more in 2022 and 91 had less than 12,000 trades. For Dealers with Limited Trading Activity, the MSRB assumes there is no need for technology subscription since they would be able to utilize one or both new exceptions, and therefore the proposed new requirement is similar to the present requirement in Rule G–14 for these dealers.

Proposed Supplementary Material .02 would require all manual trades from Active Dealers to be reported within five minutes eventually, following the conclusion of the second calendar year from the effective date. While the RTRS database currently does not flag manual trades, assuming all trades currently reported more than one minute after the Time of Trade are ''manual'' trades, Table 5 illustrates that 90.4 percent of all trades from Active Dealers were already reported within five minutes in 2022. Hence, the MSRB believes a five-minute trade reporting requirement is achievable for manual trades from Active Dealers, with a three-year phase-in period, which provides ample time for them to prepare and for the industry to create solutions.

Table 5. Trade Report Time for Estimated Manual Trades from Active Dealers

January 2022 to December 2022

Difference Between Execution and Reported Time	All Trades
2 Minutes	64.6%
3 Minutes	80.9%
5 Minutes	90.4%
10 Minutes	96.9%
15 Minutes	98.2%

Effect on Competition, Efficiency and Capital Formation

The MSRB believes the proposed change to Rule G–14 RTRS Procedures would improve market efficiency by providing more immediate trade reporting transparency to the market. If indeed there would be a reduction in customer transaction costs, as illustrated by the 2005 RTRS transition, even if on a smaller scale, the benefits to customers would accrue over a longer period that would offset the investment in upgrading technologies by select dealers. In addition, it is possible that lower transaction costs may increase investor participation and stimulate market activities by encouraging more trading by existing investors and/or bringing in new investors to the municipal securities market over the long term, therefore contributing to an overall increase in capital formation. Finally, the harmonization of MSRB rule requirements for municipal securities with FINRA requirements for other TRACE-eligible fixed-income markets, as proposed in the 2024 FINRA Proposed Rule Change, would create consistency for dealers who have trading operations in all these markets, and, thus, would increase efficiency in terms of their compliance burdens. Therefore, the MSRB believes that the proposed rule change would facilitate capital formation.

Some dealers may be impacted by the proposed rule change more than other dealers to meet the new reporting time. However, the broader impact on competition in the municipal securities market is expected to be minor. The proposed change to Rule G–14 RTRS Procedures provides a two-tier system (one-minute trade reporting requirement for Active Dealers with an exception for manual trades and 15-minute trade reporting requirement for Dealers with Limited Trading Activity) to mitigate any potential unfavorable financial impact for Dealers with Limited Trading Activity because of a lower revenue base. Therefore, the MSRB does not believe the proposed change to Rule G–14 RTRS Procedures would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Identifying and Evaluating Reasonable Alternative Regulatory Approaches

The MSRB has considered and evaluated several reasonable regulatory alternatives. One alternative the MSRB reviewed was to introduce a five-minute trade reporting period for Active Dealers. According to the MSRB's estimates, as shown in Table 1 above, 23.3 percent (97–73.7 percent) of all reported trades in municipal securities would have satisfied the five-minute reporting requirement but not the one-minute reporting requirement in 2022. If the MSRB instituted a five-minute trade reporting period, most of the industry would already satisfy the obligations of a five-minute requirement and it would likely be less of a burden for dealers to comply. In effect, MSRB rulemaking would merely align with current market practices. However, considering that most trades (97 percent) already took five minutes or less to be reported to RTRS, the MSRB believes the five-minute reporting requirement, while easier for dealers to comply with, would not have advanced the immediacy of information transparency by a meaningful amount that would make a difference for investors, especially retail investors, and other market participants.

Another alternative would be for the MSRB to change the trade reporting time by trade size. The MSRB was informed by comments received in response to the 2022 Request for Comment described below that large-sized trades are in many instances still negotiated telephonically and require more dealer attention, and therefore would be considered as trades with a manual component during the trading reporting process.[95] Table 1 above

[95] *See* Letter from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America, dated October 3, 2022, at 2–3 (''Trades negotiated and executed by phone, still the predominant execution method for block-sized trades in municipals . . . require human involvement and data entry, delaying the reporting process easily past one minute.''); Letter from Seth A. Miller, General Counsel, President, Advocacy and Administration, Cambridge Investment Research, Inc., dated October 3, 2022, at 4; Letter from Howard Meyerson, Managing Director,

Continued

shows a noticeable difference in the speed of trade reporting by different trade size groups, with the reporting time increasing with trade size. The MSRB could propose that small and medium-sized trades, *i.e.,* trades with par value below $1,000,000 which constitute about 97.3 percent of all trades, be reported within one minute while proposing a longer threshold, for example, a five-minute threshold for larger-sized trades which constitute about 2.7 percent of all trades. However, trades with a manual component are already excepted from the one-minute requirement under the proposed rule change, regardless of the trade size, which would be superior to this alternative method because the length of time to report a trade is heavily influenced by the trade reporting process rather than the size of the trade per se. In addition, anecdotal evidence suggests that large-sized trades do have more of an impact on the direction of the market, as many market participants weigh larger trades more heavily in determining market movements and many of the existing market produced yield curves either exclude small-sized trades from their analysis or weigh them much less than larger-sized trades.[96] While there may be both benefits and costs for large-sized trades to be reported sooner where possible,[97] adding a trade size-based reporting regime with delayed reporting by large-sized trades on top of the manual component exception may cause additional complication in trade reporting, potentially resulting in increased trade reporting errors and/or trade cancellations and corrections.

A slight variation of the above alternative on divergent trade reporting requirements would consider trades on Alternative Trading System (''ATS'') platforms and other non-ATS trades differently, since the speed of reporting differs between these two groups of inter-dealer trades, with 79.7 percent of inter-dealer trades on an ATS platform being reported within one minute in 2022 while only 69 percent of non-ATS inter-dealer trades being reported within one minute. However, variation of requirements could similarly cause confusion and may further add burden on dealers who may have to maintain policies and procedures with multiple exception paths. In addition, there is a possibility that this alternative may impact the competition between ATS platforms and other non-ATS platforms. Finally, ATS platforms also report trades differently, with some ATS platforms being the reporting party while other ATS platforms let participants on the ATS platforms report trades directly to RTRS. Hence, not all ATS platforms have the same reporting procedures.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On August 2, 2022, the MSRB published the 2022 Request for Comment to solicit comment on a potential amendment to Rule G–14 to require that, absent an exception, dealers report transactions to an RTRS Portal as soon as practicable, but no later than within one minute following the Time of Trade (the ''Proposal'').[98] The MSRB also published a memorandum during the comment period for the 2022 Request for Comment providing supplemental data regarding counts of trade volume and time of reporting.[99]

In response to the 2022 Request for Comment, the MSRB received 53 comment letters from 51 commenters.[100]

Financial Information Forum, dated October 3, 2022, at 4; Letter from Edward J. Smith, General Counsel and Chief Compliance Officer, Hartfield, Titus & Donnelly, LLC, dated September 14, 2022, at 4; Letter from Robert D. Bullington, Vice President, Compliance Officer, InspereX LLC, dated October 3, 2022, at 4–5; Letter from John Isaak, Senior Vice President, Isaak Bond Investments, dated August 16, 2022, at 1; Letter from Robert Blum, President, Robert Blum Municipals, Inc., dated September 16, 2022 at 1; Letter from Christopher Ferreri, President, RW Smith & Associates, LLC, dated September 13, 2022, at 4; Letter from Lee Maverick, Chief Compliance Officer, SAMCO Capital Markets, Inc., dated September 30, 2022, at 2; Letter from Kenneth E. Bentsen, Jr., President and Chief Executive Officer, Securities Industry and Financial Markets Association and the SIFMA Asset Management Group, dated October 3, 2022, at 8–9; Letter from Nyron Latif, Head of Operations, Wells Fargo Wealth and Investment Management, and Todd Primavera, Head of Operations, Wells Fargo Corporate and Investment Bank, Wells Fargo & Company, dated October 3, 2022, at 3; Email from Glenn Burnett, Zia Corporation, dated September 6, 2022, at 1. *See also* MSRB Notice 2013–02 (Request for Comment on More Contemporaneous Trade Price Information Through a New Central Transparency Platform) (Jan. 17, 2013) (eliciting similar comments), available at *https://www.msrb.org/Request-Comment-More-Contemporaneous-Trade-Price-Information-Through-a-New-Central-Transparency.*

[96] For example, the most widely used curve is the Refinitiv® Municipal Market Data (MMD) AAA benchmark yield curve that only includes institutional block size trades of $2 million par amount or more in the secondary or primary market. For additional information regarding the MMD AAA curve, *see* Cameron Marcus Arial, ''Public Administrator Choice Idaho School District Finance Policy Observed'' (May 2019). Boise State University Theses and Dissertations, File No. 1516, page 68, available at *https://scholarworks.boisestate.edu/cgi/viewcontent.cgi?article=2639&context=td.* This is in addition to the IHS Markit AAA Curve and Bloomberg BVAL municipal AAA curves displayed on the MSRB's EMMA website, which exclude small-sized trades from their methodologies.

[97] While more immediate transparency is beneficial to the market in general, there has been some concerns about information leakage if large-sized trades were reported and disseminated sooner. *See* Letter from Sarah A. Bessin, Associate General Counsel, Investment Company Institute, dated October 3, 2022, at 11.

[98] *See* MSRB Notice 2022–07 (Request for Comment on Transaction Reporting Obligations under MSRB Rule G–14) (Aug. 2, 2022), available at *https://www.msrb.org/sites/default/files/2022-09/2022-07.pdf.*

[99] Memorandum from John Bagley, Chief Market Structure Officer, MSRB (Supplemental Data with respect to MSRB Notice 2022–07 Request for Comment on Transaction Reporting Obligations under MSRB Rule G–14) (''MSRB Memorandum'') (providing supplemental trade report time data), (Sep. 12, 2022), available at *https://www.msrb.org/sites/default/files/2022-09/2022-07-MSRB.pdf.*

[100] *See* Letter from Kelli McMorrow, Head of Government Affairs, American Securities Association (''ASA'') dated September 30, 2022; Letter from Mike Petagna, President, Amuni Financial, Inc. (''AMUNI''), dated August 23, 2022; Email from Bill Bailey (''Bailey''), dated August 4, 2022; Letter from Matt Dalton, Chief Executive Officer, Belle Haven Investments, L.P. (''Belle Haven''), dated October 3, 2022; Letter from Ronald P. Bernardi, President and Chief Executive Officer, Bernardi Securities, Inc. (''BSI''), dated September 30, 2022; Letter from Will Leahey, Head of Regulatory Compliance, BetaNXT Inc. (''BetaNXT''), dated October 3, 2022; Letter from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America (''BDA''), dated October 3, 2022; Letter from David Long, Executive Vice President, Correspondent Banking/Capital Markets, and Vincent Webb, Managing Director, Bryant Bank Capital Markets, Bryant Bank (''BB''), dated September 28, 2022; Letter from Seth A. Miller, General Counsel, President, Advocacy and Administration, Cambridge Investment Research, Inc. (''Cambridge''), dated October 3, 2022; Email from Jay Lanstein, Chief Executive Officer and Chief Technology Officer, Cantella & Co., Inc. (''C&C''), dated September 16, 2022; Email from Maryann Cantone, Cantone Research, Inc. (''CRI''), dated August 2, 2022; Letter from J.D. Colwell (''Colwell''), dated September 9, 2022; Email from Raymond DeRobbio (''DeRobbio''), dated August 3, 2022; Letter from Gerard O'Reilly, Co-Chief Executive Officer and Chief Investment Officer, and David A. Plecha, Global Head of Fixed Income, Dimensional Fund Advisors LP (''Dimensional''), dated September 26, 2022; Letter from Robert A. Estrada, Esq., Chairman (Emeritus), Estrada Hinojosa & Co., Inc. (''EH&C''), dated October 3, 2022; Letter from Melissa P. Hoots, Chief Executive Officer and Chief Compliance Officer, Falcon Square Capital, LLC (''Falcon Square''), dated October 3, 2022; Letter from Howard Meyerson, Managing Director, Financial Information Forum (''FIF I''), dated October 3, 2022; Supplemental Letter from Howard Meyerson, Managing Director, Financial Information Forum (''FIF II''), dated April 27, 2023; Letter from Jonathan W. Ford, Senior Vice President, Ford & Associates, Inc. (''F&A''), dated September 9, 2022; Letter from Edward J. Smith, General Counsel and Chief Compliance Officer, Hartfield, Titus & Donnelly, LLC (''HTD''), dated September 14, 2022; Letter from Melissa Messina, Executive Vice President, Associate General Counsel, R. Jeffrey Sands, Managing Principal, General Counsel, and William Sims, Managing Principal, Herbert J. Sims & Co., Inc. (''HJS''), dated October 3, 2022; Email from Deborah Higgins, Higgins Capital Management, Inc. (''HCM''), dated September 19, 2022; Letter from Lana Calton, Executive Managing Director, Head of Clearing, Hilltop Securities (''Hilltop''), dated October 3, 2022; Letter from Joe Lee, Chief Executive Officer, Honey Badger Investment Securities, Inc. (''Honey

Following consideration of the comments received and in light of ongoing engagement with affected market participants, FINRA, the Commission and other stakeholders, the MSRB determined to file the proposed rule change, which incorporates certain key modifications to the Proposal designed to address many of the key concerns expressed by commenters and other market participants, including the establishment of the two new intra-day exceptions [101] to the baseline reporting requirement.

While two commenters expressed support for the Proposal,[102] and several other commenters expressed some support for the overall goal and certain specific aspects of the Proposal,[103] most commentors objected to shortening the timeframe for reporting from 15 minutes to one minute after the Time of Trade. The comments received in response to the 2022 Request for Comment are summarized below by topic and the corresponding MSRB responses are provided.[104]

As Soon as Practicable Requirement

The MSRB sought comment on the Proposal's addition of a requirement that trades must be reported as soon as practicable. Section (a)(ii) of the Rule G–14 RTRS Procedures does not currently include the requirement to report trades as soon as practicable. Adding this requirement would harmonize this provision with FINRA Rule 6730(a), which currently requires that, with certain exceptions, trades in TRACE-eligible securities be reported as soon as practicable.

One commenter suggested that the MSRB more closely harmonize its trade reporting requirements with FINRA's requirements by adopting the existing ''as soon as practicable'' provision of FINRA Rule 6730(a),[105] and most commenters addressing this aspect of the Proposal supported this change or viewed it as consistent with current practices.[106] No commenter that opposed the Proposal noted that the addition of the ''as soon as practicable'' language was the basis for such opposition.[107] Several commenters noted that the market already effectively reports trades as soon as practicable.[108] Another commenter, while not explicitly supporting the ''as soon as practicable'' language, supported the notion of examining and investigating dealers to ensure compliance with such standard as an alternative to shortening the timeframe for reporting.[109] One commenter also recommended that the MSRB provide supervisory guidance that parallels the provisions of Supplementary Material .03 of FINRA Rule 6730 with respect to the obligation to report trades as soon as practicable.[110]

In light of the comments received, the MSRB proposes to incorporate the requirement that trades be reported as soon as practicable into the proposed rule change for trades subject to an intra-day reporting deadline, as well as to require the establishment of policies and procedures for complying with the as soon as practicable reporting requirement in proposed new Supplementary Material .03. As discussed in ''Purpose—Proposed Rule Change—New Requirement to Report Trades ''as Soon as Practicable'' above, where a dealer has reasonably designed policies, procedures and systems in place to comply with this standard, and does not purposely withhold trade reports if it would have been practicable to report such trades more rapidly, the dealer generally would not be viewed as violating the ''as soon as practicable'' requirement because of delays in trade reporting due to extrinsic factors that are not reasonably predictable and where the dealer does not purposely intend to delay the reporting of the trade (*e.g.,* due to a systems outage).

One Minute Timeframe for Reporting

The MSRB sought comment on shortening the timeframe for reporting transactions currently required to be reported within 15 minutes after the Time of Trade to one minute after the Time of Trade under the Proposal.[111]

As noted above, most commenters objected to shortening the timeframe for reporting from 15 minutes to one minute after the Time of Trade, raising a number of issues regarding the merits of shortening the reporting timeframe,

Badger''), dated September 30, 2022; Letter from Robert Laorno, General Counsel, ICE Bonds Securities Corporation (''ICE Bonds''), dated September 30, 2022; Letter from Robert D. Bullington, Vice President, Compliance Officer, InspereX LLC (''InspereX''), dated October 3, 2022; Letter from Scott Hayes, President and Chief Executive Officer, and Chris Neidlinger, Chief Compliance Officer, Institutional Securities Corporation (''ISC''), dated September 30, 2022; Letter from Sarah A. Bessin, Associate General Counsel, Investment Company Institute (''ICI''), dated October 3, 2022; Email from Darius Lashkari, Investment Placement Group (''IPG''), dated August 2, 2022; Letter from John Isaak, Senior Vice President, Isaak Bond Investments (''IBI I''), dated August 16, 2022; Letter from Donald J. Lemek, Vice President—Operations and Chief Financial Officer, Isaak Bond Investments, Inc. (''IBI II''), dated October 3, 2022; Email from Mike Kiley, Owner, Kiley Partners, Inc. (''KPI''), dated September 27, 2022; Letter from Gary Herschitz, Chief Executive Officer, Madison Paige Securities (''MPS''), dated September 30, 2022; Email from Christopher Mayes (''Mayes''), dated September 27, 2022; Letter from Kathy Miner (''Miner''), dated October 2, 2022; Letter from Randy Nitzsche, President and Chief Executive Officer, Northland Securities Inc. (''NSI''), dated October 3, 2022; Letter from James W. Oberweis, President, Oberweis Securities, Inc. (''OSI''), dated September 28, 2022; Letter from H. Deane Armstrong, Chief Compliance Officer, and Joseph A. Hemphill III, Chief Executive Officer, Regional Brokers, Inc. (''RBI''), dated October 3, 2022; Letter from Robert Blum, President, Robert Blum Municipals, Inc. (''RBMI''), dated September 16, 2022; Letter from F. Gregory Finn, Chief Executive Officer, Roosevelt & Cross, Inc. (''R&C''), dated October 3, 2022; Letter from Christopher Ferreri, President, RW Smith & Associates, LLC (''RWS''), dated September 13, 2022; Letter from Lee Maverick, Chief Compliance Officer, SAMCO Capital Markets, Inc. (''SAMCO''), dated September 30, 2022; Letter from Matthew Kamler, President, Sanderlin Securities LLC (''Sanderlin''), dated September 27, 2022; Letter from Kenneth E. Bentsen, Jr., President and Chief Executive Officer, Securities Industry and Financial Markets Association and the SIFMA Asset Management Group (collectively, ''SIFMA''), dated October 3, 2022; Letter from Joseph Lawless, Chief Executive Officer, Sentinel Brokers Company, Inc. (''SBC''), dated September 30, 2022; Email from Edward Sheedy (''Sheedy''), dated August 2, 2022; Letter from Glen Essert, Stern Brothers & Co. (''Stern''), dated October 3, 2022; Letter from Jesy LeBlanc and Kat Miller, TRADEliance, LLC (''TRADEliance''), dated September 28, 2022; Email from William Tuma (''Tuma''), dated August 8, 2022; Letter from Nyron Latif, Head of Operations, Wells Fargo Wealth and Investment Management, and Todd Primavera, Head of Operations, Wells Fargo Corporate and Investment Bank, Wells Fargo & Company (''Wells Fargo''), dated October 3, 2022; Letter from Keener Billups, Managing Director, Municipal Bond Department, Wiley Bros.-Aintree Capital (''Wiley''), dated September 20, 2022; Email from Thomas Kiernan, Wintrust Investments, LLC (''Wintrust''), dated August 2, 2022; Email from Glenn Burnett, Zia Corporation (''Zia''), dated September 6, 2022. All comments are available at: *https://www.msrb.org/sites/default/files/2023-03/All-Comments-to-Notice-2022-07.pdf.*

[101] *See supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement.''

[102] *See* Dimensional; Tuma.

[103] *See* ICE Bonds at 1; ICI at 2; SIFMA at 2; Wells Fargo at 1.

[104] Simultaneously with the MSRB's publication of the 2022 Request for Comment, FINRA published a request for comment on a proposal to similarly shorten FINRA's TRACE trade reporting timeframe for transactions in TRACE-eligible securities (the ''FINRA TRACE Proposal''). *See* FINRA Regulatory Notice 22–17 (FINRA Requests Comment on a Proposal to Shorten the Trade Reporting Timeframe for Transactions in Certain TRACE-Eligible Securities From 15 Minutes to One Minute) (Aug. 2, 2022); *see also* 2024 FINRA Proposed Rule Change. Many commenters responding to the 2022 Request for Comment also commented on the FINRA TRACE Proposal. The discussion of comments herein is mostly confined to those comments addressing the Proposal or the MSRB.

[105] *See* SIFMA at 4, 7, 17, 21–22. BetaNXT, HJS, Hilltop and R&C expressed general support for SIFMA's comment letter.

[106] *See* Dimensional; EH&C at 2; SIFMA at 4, 7, 17, 21–22.

[107] Rather, commenters opposing the Proposal, as discussed herein, focused on the shortening of the deadline from 15 minutes to one minute.

[108] *See* BDA at 1–2; HJS at 5; SBC at 2. Hilltop and R&C expressed general support for BDA's comment letter.

[109] *See* Belle Haven at 7.

[110] *See* SIFMA at 21–22.

[111] Transactions would also be required to be reported as soon as practicable, as described above.

specific operational aspects of implementing a shortened timeframe, the range of transactions and dealers subject to the new timeframe, and the speed and manner of transitioning to a general one-minute reporting requirement.

Operational Issues Relating To Reporting Within One Minute

Time of Trade

In the 2022 Request for Comment, the MSRB noted that the time to report a trade is triggered at the time at which a contract is formed for a sale or purchase of municipal securities at a set quantity and set price. The 2022 Request for Comment asked whether ''Time of Trade,'' as currently defined, is the appropriate trigger and, if not, what other elements of the trade should be established before the reporting obligation is triggered.

One commenter agreed that the definition of ''Time of Trade'' referenced in the 2022 Request for Comment is the appropriate trade reporting trigger.[112] Several other commenters expressed a desire for greater clarity regarding the definition of ''Time of Trade.'' [113]

A few commenters discussed certain trading scenarios in which they believed that the ''Time of Trade,'' as defined by the MSRB, would not be the appropriate trigger for trade reporting. One commenter noted that manual trade entry does not necessarily begin at the time of execution, particularly for firms that manually report trades to the RTRS Web Portal.[114] This commenter noted that a number of issues may arise that can result in a delay of the manual trade entry process, including information gaps due to new or unfamiliar securities or having to wait to receive necessary information from the other side of the transaction.

Two commenters acknowledged that while personalized negotiation effectively occurs prior to the formal time of execution that marks the beginning of the trade reporting process, the two stages are inextricably linked.[115] These commenters were concerned that mandating one-minute trade reporting across the board would require a de-linking of these two processes, which could introduce artificiality into the broker-client relationship and hinder execution until adequate technological advances are developed. Another commenter argued that the primary consideration should be the business method used in trade execution, such as in the case of the business model of a voice broker. This commenter provided an example of a one-on-one transaction created between a buyer and seller when a dealer executes a trade with a customer, and contrasted this with an intermediated trade by a voice dealer that includes multiple components. For these types of intermediated trades, the commenter noted that perhaps an appropriate trigger would be when the intermediate transaction is complete (*e.g.,* when all underlying trades of the intermediate transaction are executed).[116]

One commenter noted that if dealers are not permitted 15 minutes to report manually executed trades, a firm that wants to continue to execute trades manually might need to reach an agreement or understanding with its customers that the execution time for a trade agreed to by telephone, instant messaging or chat communication is the time that the firm inputs the trade into the firm's books and records in a systematized format for reporting to RTRS without manual input.[117]

Another commenter noted that current fixed income trade matching processes are not keyed off of time of execution, which would naturally have an impact on the degree of precision of the time of trade execution data when looking at finer time gradations, such as within a single minute.[118]

The MSRB is not seeking to amend the definition of ''Time of Trade'' in conjunction with the proposed one-minute reporting requirement. However, the MSRB has provided a discussion of certain factors that may be relevant to determining the Time of Trade that should address many of the concerns that the shorter reporting timeframe would create greater pressure and require greater precision in determining the Time of Trade.[119] The MSRB believes that its use of the term ''Time of Trade'' is appropriate and consistent with how that term is understood by FINRA in connection with the reporting of TRACE-eligible securities to TRACE under applicable FINRA rules, and that the guidance provided herein would provide more assurance for dealers in determining the Time of Trade with greater clarity and precision.

Automation of Trade Execution and Reporting

The 2022 Request for Comment noted that 76.9 percent of trades in 2021 subject to the existing 15-minute reporting requirement were reported within one minute and requested input on whether there are any commonalities with the trades that were reported within one minute or reported after one minute. The 2022 Request for Comment also noted that, based on the MSRB's analysis, trades conducted on ATS platforms in 2021 were reported in less time than trades not conducted on ATS platforms (''non-ATS trades''), with 84.4 percent of inter-dealer trades conducted on an ATS platform being reported within one minute while only 74.9 percent of non-ATS trades were reported within one minute. The 2022 Request for Comment sought information on the reason(s) it takes more time to report non-ATS trades.

Commenters generally noted that the commonalities in the trades reported within one minute or after one minute depend on the extent of human intervention required to execute and report a trade.[120] In general, these commenters acknowledged that faster reporting may be achieved for the remaining approximately 20–25 percent of trades depending on the level of automation of trades with more straight-through processing and progressively reduced human intervention.

Commenters generally agreed that the shorter reporting times of ATS trades are the result of those trades being executed on a fully automated and connected trading venue.[121] They acknowledged that in a connected system, trades flow automatically and timing is almost instantaneous, with little to no manual intervention.[122] In contrast, these commenters acknowledged that trades executed away from an ATS take more time to report due to higher levels of human intervention.

The MSRB understands that automated processes currently play a significant role in facilitating rapid reporting of trade information to RTRS. The MSRB is aware, both through its own statistics and from input from commenters, as more fully discussed below, that trades that involve full automation through the trade execution and reporting process typically achieve near instantaneous trade reporting that is already consistent with the proposed

[112] *See* Colwell at 3.

[113] *See* BSI at 2; Colwell at 2; ISC at 2; ICI at 3; IBI II at 1; SIFMA at 14, 20–21; TRADEliance at 1.

[114] *See* Belle Haven at 5.

[115] *See* HJS at 4 (quoting SIFMA at 9).

[116] *See* HTD at 4.

[117] *See* FIF I at 4. BetaNXT expressed general support for FIF's comment letter.

[118] *See* SIFMA at 7.

[119] *See supra* ''Purpose—Proposed Rule Change—Time of Trade Discussion'' for a discussion of and related guidance on the definition of Time of Trade under Rule G–14 RTRS Procedures Section (d)(iii).

[120] *See* BB at 1; Colwell at 2; Falcon Square at 1–2; FIF I at 2; HTD *passim;* OSI at 1; TRADEliance at 2.

[121] *See* HTD at 5; RWS at 5; Sanderlin at 6.

[122] *See* Baily at 1.

one-minute timeframe, but that other trades face higher challenges to achieving one-minute reporting. As discussed previously, the MSRB reminds dealers seeking to comply with the proposed rule change—including the one-minute reporting requirement and new or existing exceptions from such requirement—that they should consider the extent to which they can automate their trade reporting and related execution processes, consistent with their clients' needs and the dealers' best execution and other regulatory obligations.[123]

Manual Steps in the Negotiation, Execution and Reporting Process

Several commenters raised issues about the potential impact of the proposed rule change on trades that are negotiated by voice and/or where the reporting process includes one or more manual components in execution or trade reporting, such as in the case of large block trades that require subsequent allocation, portfolio trades or other types of complex trades that require some form of human intervention.[124] These commenters generally agreed that while manual trades represent a relatively small percentage of trades by trade count, for the types of trades identified above, a dealer may not be able to input and verify trade data within one minute if that process involves human intervention. These commenters further asserted that the proposed rule change would disproportionately impact firms that accept orders that are not electronically entered into an order management system (including orders received via telephone or instant message) and would effectively prohibit, by trade reporting rule, an entire category of transactions that are otherwise customary industry practice. These commenters also noted that this practice was particularly important to the municipal securities industry where large institutional trades or block trades are more likely to be negotiated and executed by voice and processed manually.

Another commenter argued that in most cases, it is not financially feasible for a firm to report a trade to RTRS or TRACE within one minute if the trade has been executed manually. This commenter noted that manual trading is common in the very large universe of fixed income securities for various reasons.[125] One commenter noted that the only way for a trade to be entered within 60 seconds is if two opposing traders are on the phone at the same time and they agree to drop their tickets at that very moment and input the data immediately.[126]

The MSRB recognizes that for some trades in the municipal securities market, the trade details are entered manually due to the inherent nature and characteristics of such trades. The MSRB also understands that voice and electronic communications as a means of trade execution that are not utilizing straight-through processing or are not part of an automated trade execution and reporting process are common for the municipal securities market. For these trades, the trade reporting process might be difficult or impossible to complete within one minute following the time of trade, even where the dealer has established efficient reporting processes and commences reporting the trade without delay.

As outlined below, commenters discussed a number of specific scenarios involving such communications or other manual steps in the process of executing and reporting trades for which shortening the trade reporting timeframe could, in their view, potentially result in adverse consequences.

To address these concerns, including the specific aspects raised by commenters outlined in subparagraphs below, the MSRB has included in the proposed rule change an exception from the proposed one-minute trade reporting timeframe for trades with a manual component, which would retain the existing 15-minute deadline for the first year in which the proposed rule change is effective and then provide for a measured decline in the timeframe to five minutes beginning two years after such effectiveness, as discussed in greater detail herein.[127] This phased approach would provide dealers effecting trades with a manual component with a phased approach to achieving compliance that, the MSRB believes, appropriately addresses the concerns that commenters expressed.[128]

Voice and Negotiated Trading

Many commenters expressed concern about the potential impact of the Proposal specifically on voice and negotiated trading, asserting that, unlike equity markets, business in fixed income markets is often conducted through voice negotiations, for institutional customers as well as certain retail investors.[129]

One commenter that is a dual registrant as a dealer and investment advisor noted that an accelerated trade reporting regime would negatively impact market participants that continue to prefer manually negotiated trades for some portion of their fixed income trading activity. While acknowledging that the volume of fixed income trades executed electronically has risen, this commenter stated that many investors still prefer to trade with dealers by voice or electronic message (manually negotiated trades) rather than on an electronic platform to benefit from receiving input on market color, including credit information and information about comparable bonds trading in the market. The commenter stated that some investors may also prefer to negotiate on price directly because they are executing block-size trades or portfolio trades. This commenter stated that trades negotiated and executed manually (by voice or electronic message) take longer to input and report in comparison to trades executed electronically. This commenter further noted that a one-minute reporting requirement would present a variety of process-oriented, timing, and operational challenges, especially for a trading desk engaging with multiple clients simultaneously and, therefore, the proposed acceleration of reporting could alter the efficiency of fixed income markets.[130]

One commenter noted that the issue is not that dealers that execute larger trades are using inefficient processes but that such trades are typically executed by institutions using voice brokers. This commenter also noted that there is a difference between institutional, voice brokered fixed income markets and retail fixed income markets with respect

[123] *See supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component'' for a discussion of and related guidance on trades having a manual component.

[124] *See e.g.,* ASA at 4–5; Bailey at 2; C&C at 1; and FIF I at 1–2; HTD *passim;* HJS at 2–4; ISC at 2; IBI I at 1; KPI at 1; Mayes at 1; RBMI at 1; RWS at 1–5; SAMCO at 1–2; SIFMA at 8–12, 24; SBC at 1–2; TRADEliance at 2; Wells Fargo at 3; Wintrust at 1. Hilltop, Honey Badger, MPS and RBI expressed general support for ASA's comment letter.

[125] *See* FIF at 2.

[126] ISC at 2.

[127] *See supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component'' discussing the proposed exception for trades with a manual component.

[128] While the MSRB believes that the exception for trades with a manual component effectively addresses the core issues raised in the comments described in Subsections (1) through (6) below, the MSRB also addresses certain other related comments not fully resolved by such exception in ''One Minute Timeframe for Reporting—Potential Negative Consequences of the One Minute Requirement.''

[129] *See e.g.,* ASA at 3–4; AMUNI at 1; Bailey at 1; BDA at 2; Cambridge at 4; Colwell at 3; HTD *passim;* FIF at 3, 4; HJS 2, 5; InspereX at 3–5; ICI at 3, 4, 7, 9, 11; IBI I at 1; RBMI at 1; RWS at 1–5; SAMCO at 1–2, 4; SIFMA at 5, 8, 11, 15, 24; SBC at 2; Wells Fargo at 3; Wintrust at 1.

[130] *See* Wells Fargo at 3.

to the manner in which trades in these markets are negotiated, executed and processed. This commenter expressed concern that one-minute reporting would effectively eliminate voice trading.[131]

Larger-Sized Trades

The 2022 Request for Comment noted that larger-sized trades take longer to report than smaller-sized trades and requested input on the reason(s) it takes a firm that reports larger-sized trades more time to report a trade (*e.g.,* voice trades). The MSRB also asked if dealers and investors would need process changes for executing and/or reporting larger-sized trades in a shorter timeframe and if so, how.

A commenter stated that many small trades are executed on electronic platforms and require minimal, if any, manual intervention, allowing many smaller trades to be executed and reported almost instantly. In contrast, the commenter stated that larger trades typically require traders to negotiate and confirm details with a client and manually enter the transaction into risk and reporting systems. This commenter noted that large trades generally require greater focus on risk management to promptly source and accurately hedge the transaction in question, and an inability for firms to manage their risk could hamper firms' willingness to incur risk, which could dampen liquidity, increase systemic risk if dealers become less capable of hedging on a timely basis and reduce execution quality for the institutional investor.[132]

A trade association commenter representing regulated investment funds with members that are participants in the municipal securities market noted that many of its members send large trades to dealers that are worked throughout the day, which may have implications for dealers' ability to report transactions within one minute or an otherwise shortened timeframe.[133] This commenter also noted that certain characteristics of trades, particularly large trades and trades in less liquid securities, are often done via ''high touch'' methods such as voice protocol, often involving negotiation as to prices and size of the trade.[134]

Mediated Transactions

One commenter identified itself as a broker's broker that engages in mediated transactions with other dealers to facilitate anonymity. It noted that these mediated trades are often voice negotiated and require manual intervention and processing from the point of execution through the clearance and settlement processes. The commenter stated that these trades are not reported within five minutes of execution, especially for trades involving multiple counterparties, but that dealers use their best efforts to report their trades as soon as practicable. The commenter noted that processing of such trades is typically manual given the complexities of mediated institutional transactions.[135]

This commenter further asserted that broker's brokers and other inter-dealer brokers often are tasked by their dealer clients to anonymously facilitate trades in numerous different credits as part of the clients' trading needs on behalf of their own customers, requiring reports of a large number of trades executed at the same time. The commenter added that in some cases a transaction involves the simultaneous purchase of a security and a hedge or other corresponding security with multiple counterparties (*e.g.,* buyer and seller is intermediated by a broker's broker). The commenter stated that, to the extent that all of these securities have a one-minute reporting requirement, both set of trades would need to be reported within the same minute, which may be functionally impossible.[136]

Block Trades and Trade Allocations

A few commenters expressed concerns about large block trades executed by firms that are dual registrants as dealers and investment advisers, noting that these large trades must be further allocated to their advisory customers. They noted that large block trades may be executed contemporaneously with one or more counterparties, usually through voice negotiation and a coordinated effort, and the allocation may involve several additional smaller transactions with multiple customers to fully reflect the deal and may potentially involve multiple systems.[137]

Specifically, one commenter noted that a trade reporting exception is necessary for block trades executed by a dealer and allocated to client accounts of a registered investment adviser that is part of the same legal entity. This commenter noted that as a dual registered dealer and investment adviser, it regularly executes and reports block trades and allocates portions of those trades to individual advisers' client accounts and the sub-account allocations are executed at the same price as the initial block trade.[138] Another commenter noted that when a dually-registered dealer/investment adviser purchases a large block from the secondary market, it must report the block trade to RTRS and also report each allocation to the sub-accounts held in its investment adviser capacity, including managed retail customer accounts.[139] This commenter stated that the reporting issues presented by such allocations are similar to those for the reporting of portfolio trades, particularly the difficulty of reporting potentially thousands of portfolio trades or allocations within a one-minute reporting paradigm, as described below.[140]

Portfolio Trades and Trade Lists

Multiple commenters noted that dealers may receive large orders and trade lists that involve rapid execution and frequent communications on multiple transactions with multiple counterparties. They stated that these trades may be executed as a series of trades that then must be entered into the system one-by-one and could be difficult to report within one minute following the Time of Trade.[141] In addition, several commenters noted that some transactions including large blocks of transactions such as portfolio transactions may be subject to a firm's internal approval processes for risk and regulatory compliance and additional due diligence by way of, for example, a second review to ensure accuracy.[142]

One trade association commenter noted that its members execute and report their portfolio trades electronically because of the challenges presented by manually inputting a large number of trades within a limited time period.[143] In contrast, another trade association commenter stated that many customers engaging in portfolio trades seek to do so through personalized negotiation rather than through electronic venues, due in part to the complexity of counterparties assessing potentially thousands of different securities without the targeted interactions that occur in personalized negotiation, and because of concerns about potential pre-execution leakage of

[131] *See* SAMCO at 1–2.

[132] *See* SIFMA at 14–16.

[133] *See* ICI at 13 n.41.

[134] *Id.* at 9 n.30.

[135] *See* RWS at 1; *see also* SIFMA at 15.

[136] *See* RWS at 1.

[137] *See* AMUNI at 2; BSI at 3; BetaNXT at 5; HJS at 4; ICI at 6, NSI at 1, RWS at 3; SIFMA at 10, 15, 19, Wells Fargo at 2–4.

[138] *See* Wells Fargo at 2–3.

[139] *See* SIFMA at 15.

[140] *Id.*

[141] *See* BSI at 2; BB at 1; ICI at 13 n.41; FIF I at 4; SIFMA at 14–15; Wells Fargo at 4.

[142] *See* BSI at 2; BB at 1; FIF I at 4; HJS at 6; SIFMA at 14–15; Wells Fargo at 4.

[143] *See* FIF I at 4.

information regarding the nature of the investor's positions and trading strategies from electronic trading venues.[144]

One commenter noted that dealers often provide liquidity for portfolios of bonds, including portfolios with more than one hundred individual bonds. This commenter asserted that under a one-minute reporting rule, dealers may not be able to execute these types of portfolio trades at one point in time and report the trades in a timely manner. The commenter advocated for an exception for portfolio trades and for instances where market participants solicit actionable bids or offers on multiple securities, such as a portfolio trade or a ''bid wanted'' list.[145]

Another trade association commenter representing regulated investment funds with members that are participants in the municipal securities market noted that some of its members engage in portfolio trades, which require members to give certain information to dealers, and that this may have implications for those dealers' ability to report transactions within one minute or an otherwise shortened timeframe and encouraged the MSRB to fully explore potential operational issues.[146]

Trading a Bond for the First Time/ Security Master Issues

The 2022 Request for Comment sought information on any necessary process(es) a dealer needs to complete before trading a bond for the first time that could impact the ability to report a trade within a reduced timeframe (*e.g.,* querying an information service provider to obtain indicative data on the security).

Many commenters were concerned about delays introduced by trades of newly issued or infrequently traded securities where the security reference information or indicative data is not already available within the firm's or the clearing firm's security master.[147] One trade association commenter advocated that the MSRB provide an exception for a security that may not be in a firm's security master at the time the trade is executed. It also maintained that this exception should extend to instances where a firm maintains separate security masters for different customers.[148] Another trade association commenter noted that one-minute reporting may raise practical challenges for certain asset classes, citing as an example, the municipal securities market as being characterized by a large number of individual security references, many of which are infrequently traded.[149]

Relatedly, some commenters noted that the absence of a centralized global security master for municipal securities introduces delays in the trade execution and reporting process and advocated for the MSRB to consider hosting a security master for municipal securities.[150] A few commenters suggested that a one-minute trade reporting deadline would be more practicable if the MSRB hosted a security master or hosted a securities master jointly with FINRA.[151] One commenter stated that most market participants, including large clearing firms, do not have the entire municipal securities market reference information in their database, with new security references created daily and old securities maturing. This commenter noted that, in general, if a security is not set up in a security master, it is because there has not been a past transaction at the dealer or clearing firm, and the time necessary to process the set-up of a security in the security master greatly exceeds one minute.[152] A trade association commenter observed that its members state that it takes almost all of the allotted 15 minutes to query an information service provider to upload the missing security master information and indicative data to refresh their securities master, then submit the trade report.[153] Another commenter stated that some back-office systems that provide the connection to the MSRB for reporting of corresponding trades also require the security master update to be performed manually and therefore cannot report a received trade within one minute.[154]

The exception for trades with a manual component is designed to address these concerns as described above. While the MSRB acknowledges the suggestion that it host a global security master for use by dealers in reporting trades to RTRS, and while the MSRB continues to focus on making its market transparency systems more useful for market participants, the MSRB would not at this time be instituting such a global security master in connection with the proposed rule change.

Multiple Layers in Reporting Process

A commenter opined that the current RTRS workflow is not suitable for reporting trades within a one-minute time frame due to multiple layers (*i.e.,* third-party vendors and systems) that trade reports often pass through before they are received by RTRS. This commenter identified the various layers, including submission of the trade by the executing firm to RTTM; if an executing firm is not a clearing firm, the need to have the clearing firm report the executing firm's trade to RTTM; and, if the clearing firm outsources the trade reporting function to a service provider, such provider must make the submission in the format accepted by RTRS. To address limitations faced by some vendors, this commenter advocated for allowing trade submissions of municipal securities to be made directly to TRACE using FIX, rather than RTRS, or that the implementation period for the RTRS reporting changes be postponed until a reasonable period after the TRACE reporting changes proposed in the FINRA TRACE Proposal have been implemented to avoid dealers being overburdened with implementing reporting changes for two different systems at the same time.[155] Other commenters expressed similar concerns regarding the reliance on a third party for clearing and trade reporting.[156]

One commenter noted that while many firms use semi-automated systems, many others use a manual system to execute trades with their clearing firm, and that converting to a fully automated system is far too expensive and therefore an impractical solution for many firms.[157] Another commenter stated that it relies on a third party for clearing and trade reporting to RTRS, and such clearing firm performs the trade reporting within one minute of the time the trade is submitted by the dealer using the clearing firm's order entry system. However, this commenter states it does not have an automated order entry system, indicating the trade may be input into the clearing firm's order entry system after the time of trade and entails manual steps.[158] A third commenter noted that the industry generally fulfills the regulatory trade reporting obligation further downstream in the trade

[144] *See* SIFMA at 14.

[145] *See* Wells Fargo at 4.

[146] *See* ICI at 13 n.41.

[147] *See* ASA at 5; Bailey at 1; BetaNXT at 4; Colwell at 2, 4; ISC at 2, RWS at 4; SAMCO at 3; Sanderlin at 6–7.

[148] *See* FIF I at 8.

[149] *See* ICI at 4 n.9.

[150] *See* Bailey at 1; BetaNXT at 3–4; BB at 1–2; Cambridge at 2; ISC at 2; RWS at 5; Sanderlin at 6; SIFMA at 11–12; TRADEliance at 2.

[151] *See* FIF I at 8; SAMCO at 3; SIFMA at 22–23; Wells Fargo at 4; Zia at 1.

[152] *See* SAMCO at 3.

[153] *See* SIFMA at 22.

[154] *See* Zia at 1.

[155] *See* FIF I at 6–7 nn.25–28.

[156] *See* BSI at 2; Colwell at 2; Falcon Square at 1–2; HTD at 6; Hilltop at 1; RBMI at 1; Wells Fargo at 4.

[157] *See* BSI at 2.

[158] *See* Sanderlin at 6.

management process, and that industrywide processes may need further rearchitecting and significant re-engineering of systems to move trade reporting upstream. This commenter noted that this problem is of particular concern for firms that rely on third parties for trade reporting or for firms that employ systems that, by design, report trades through their respective back-end systems.[159]

Trades Reported Through RTRS Web Interface

The MSRB noted that submitting transactions to RTRS directly through the RTRS Web interface takes longer. The 2022 Request for Comment sought information regarding the average amount of time required to report a trade through the RTRS Web interface, how the MSRB could improve the process for reporting through the RTRS Web interface and the instance(s) in which a dealer might choose to or need to use the RTRS Web interface.

A few commenters noted that their trades are reported electronically by their clearing firms and that they do not normally report trades via the RTRS Web interface.[160] One commenter noted that, at least until alternative methods of reporting trades are developed to allow dealers to efficiently and effectively report the types of trades that they currently report manually, retaining but considerably improving the existing web interfaces is necessary.[161] The commenter requested greater transparency in system outages and performance degradations, heightened service level agreements and emphasized that dealers should not be penalized for MSRB system outages. Similarly, some commenters noted that there may be issues external to MSRB systems, including internet and other types of broad-based or localized outages or degradations outside the control of dealers that may sometimes interfere with their ability to make timely trade reports through the SRO web interfaces, which would be increasingly problematic with any potential shortening of the trade reporting window.[162]

The RTRS Web interface is one of three available RTRS Portals under Rule G–14 RTRS Procedures Section (a)(i)(B) (RTRS Web Portal or RTRS Web) and would be maintained as such under the proposed rule change. The MSRB will continue to explore ways in which to assure RTRS Web's reliability and efficiency for use. With regard to systems outages, the MSRB maintains a Systems Status Page on the MSRB website,[163] which indicates the current operational status of each of the MSRB's market transparency systems and related supporting systems and provides any then-applicable status updates. In addition, users are able to access a historical catalogue of past MSRB systems outages through the Systems Status Page.

Potential Negative Consequences of the One Minute Requirement

Accuracy of Information Reported and Potential Data Entry Errors

The MSRB requested input on whether reducing the timeframe to as soon as practicable, but no later than within one minute after the Time of Trade, would affect the accuracy of information reported and/or the likelihood of potential data entry errors and if so, the reason for such impact.

A number of commenters predicted that a rapid transition to a one-minute standard would result in increased errors and corrections in trade reporting as well as late trade reporting that would lead to increased enforcement action.[164] One commenter observed that the current 15-minute reporting timeframe allows for traders to adequately review trade tickets for errors in settlement, price, amount, and similar data fields. This commenter stated that, even with the current 15-minute reporting window, human errors in completing trade tickets often lead to trade cancellations and modifications.[165] Some commenters noted that reducing the trade reporting time to one minute would likely have a detrimental effect on reporting accuracy because market participants would be far more concerned with timely reporting than reviewing for accurate trade information.[166] Other commenters expressed the concern that, if the Proposal were to be adopted, firms may not have sufficient time to correct errors and would therefore be in violation of trade reporting requirements.[167]

One commenter expressed concern that portfolio trades with potentially thousands of unique securities might overwhelm the error and correction process, or result in a surge of late trade reports, if placed under a one-minute reporting standard. This commenter stated that, depending on the nature of an adjustment or other small change in terms in the context of a portfolio trade, that single adjustment might result in the need for trade reporting correction for all the reported trades for the basket of securities within the portfolio.[168]

Additional commenters felt that the dissemination of inaccurate data caused by rushed reporting would be detrimental to the MSRB's goal of increased market transparency.[169] One of these commenters stated that, if a sizable percentage of trades must be revised or are reported late due to practical limitations regarding dealer operational workflow, this could result in inaccurate data being reported to the MSRB and disseminated publicly, thus undercutting a key purpose of adopting the shortened reporting timeframes.[170]

A commenter noted that large trades require a higher level of review than other trades and, as a result, large trades could land in error queues or other queues for manual reviews for margin or credit issues. The commenter stated that it would be extraordinarily difficult to engage in these types of reviews in an effectively instantaneous manner as would be required under a one-minute reporting regime. This commenter further stated that ensuring that large trades are executed accurately is critically important not only because of the higher financial stakes inherent in large trades, but also because the larger trades are often viewed by the market as the most informative, as to current price levels, have the greatest influence on market indices and generally set market tone. The commenter believed that the Proposal, if adopted, could significantly curtail parties' ability to engage in manual handling of trades and would have negative impacts on risk management and liquidity, with, at best, little to no actual benefit to the overall quality of market data.[171]

The MSRB believes that the degree to which a shortened trade reporting timeframe might result in a greater prevalence of the reporting of inaccurate information is significantly ameliorated by the inclusion of the two new reporting exceptions under the proposed rule change since the most likely circumstances where the risk of errors could be heightened would be in the case of trades with a manual component or trades by dealers that

[159] *See* SIFMA at 20–21.

[160] *See* Colwell at 4; SAMCO at 1; HTD at 6; RWS at 5.

[161] *See* Colwell at 2.

[162] *See id.;* FIF I at 6–7; FIF II at 1–2; SIFMA at 23–24.

[163] *See https://www.msrb.org/System-Status.*

[164] *See* ASA at 5; BB at 1; Cambridge at 3; Colwell at 2; EH&C at 1–2; HJS at 2–3; ICI at 12–13; IBI II at 1–2; Miner at 1; SIFMA at 15–17.

[165] InspereX at 5.

[166] *Id.* at 5–6. *Accord.* Cambridge at 3; HTD at 6; RWS at 5; SAMCO at 2.

[167] ASA at 5. *See also* SIFMA at 17.

[168] *See* SIFMA at 16.

[169] *See* Colwell at 2; HJS at 2–3; ICI at 12–13; InspereX at 6; Miner at 1.

[170] ICI at 12–13.

[171] *See* SIFMA at 16.

only engage in limited municipal securities trading activities. Under the exception for trades with a manual component, the existing 15-minute deadline would be retained for the first year in which the proposed rule change is effective and then decline in phases to five minutes beginning two years after such effectiveness to provide dealers adequate time to adjust their processes and systems. The exception for dealers with limited trading activity would retain the current 15-minute timeframe and therefore there would be no appreciable impact on the accuracy of trade reports for such dealers' transactions.

Impact on Risk Management and Hedging

Several commenters articulated concern that one-minute trade reporting would result in a decreased ability of dealers to manage risks through timely hedging activity. These commenters noted that unlike securities that are purchased and sold to customers almost immediately, securities that are held in a firm's own inventory may require additional coordination and diligence to hedge those positions or take down a hedge when the position is unwound.[172] One commenter noted that institutional clients and/or dealers trading in blocks often need to simultaneously take action to hedge their risk on such trades, particularly during periods of volatility. This commenter expressed concern that the need for dealers to attend to trade reporting to meet a one-minute requirement on their fixed income trades in lieu of immediately focusing on hedging or assisting institutional clients with their own hedging would have an adverse impact on such efforts.[173]

Based on the comments received on the 2022 Request for Comment, the MSRB believes that such risk management or other hedging activities typically occur during the course of the types of municipal securities transactions that commenters identified as requiring manual or other human intervention. Such trades would, in many cases, qualify for the exception for trades with a manual component, thereby providing dealers with a phased approach to reducing the reporting timeframe to an eventual five minutes in a manner that should allow such dealers to put in place appropriate process or systems changes that would significantly mitigate these concerns.

Impact on Best Execution Obligations

Many commenters also expressed concern that compliance with the proposed rule change would negatively impact some firms' best execution obligations.[174] For example, one commenter noted that it built out a semi-automated system to incorporate the human element, purposely relying on a person to check and verify several factors before trade execution, so that its process protocol reduces trade error frequency and helps ensure compliance with due diligence, best execution and other obligations.[175] Another commenter noted that, due to the human factor of voice brokerage activities and the impracticability, if not impossibility, of automating these modes of trading, any attempt to decrease reporting time would require additional personnel to essentially shadow traders, preparing tickets and performing accuracy checks, best execution checks and suitability checks, while the trader is verbally negotiating the terms of the transaction with the counterparty or broker. This commenter expressed concern about the ongoing costs as well as the practicality of such shadowing of traders.[176] One commenter noted that the Proposal could create an incentive for firms to ''auto-route'' more orders to help with compliance, resulting in fewer individuals at such firms being involved with handling orders with the potential consequences for price improvement and best execution obligations.[177]

While it is likely that many dealers fulfill their best execution obligations under MSRB Rule G–18 using processes that would not normally have an impact on the timing of trade reporting of individual transactions, the MSRB understands from commenters that some dealers may have instituted processes with respect to their best execution obligations that include manual steps or require other human intervention occurring after the Time of Trade and therefore could have an impact on the timing of trade reporting. The MSRB believes that the exception for trades with a manual component would provide dealers that use such a post-trade best execution process with a phased approach to reducing the reporting timeframe to an eventual five minutes in a manner that should allow them to make any appropriate adjustments to such process that would significantly mitigate these concerns.

Burden on Dealers That Report a Small Number of Trades

The MSRB noted that, on average, dealers that report a smaller number of trades per year take longer to report trades than dealers that report a larger number of trades and requested information on the reason(s) it takes a firm that reports a small number of trades more time to report a trade and if and how their processes need to change to report trades in a shorter timeframe.

Commenters generally agreed that many small dealers manually input their trades into RTRS because their trade volume does not warrant the cost to employ automated solutions and that manually inputting trades means the reporting process takes longer because all of the required information must be keyed in by a human.[178] Commenters argued that a significant increase in costs would disproportionately impact small dealers.[179] One commenter noted that shortening the reporting deadline would eliminate manual entry and human intervention and force small firms to use expensive front-end trade order management systems.[180] Another commenter stated that the municipal securities market lacks a cost-effective software solution for all dealers to comply with the Proposal and any new system would have to be implemented over existing technology. It stated that the prohibitive cost would reduce participation and efficiency in the market.[181] Commenters noted that this would impose a disproportionate financial burden on small- and medium-sized dealers, as they would have to invest a significant amount of capital to comply with the Proposal. As a result, these commenters expressed concern that many small dealers including those with regional knowledge may exit fixed income secondary trading. The commenters noted that this exit would lead to a further concentration of municipal bond trading among the largest dealers in the industry.[182] A commenter opined that this would, in turn, reduce competition, concentrate

[172] *See* Hilltop at 1; ICI at 10; R&C at 1; SIFMA at 11, 15–16.

[173] *See* SIFMA at 11, 15–16.

[174] *See* ASA at 5; AMUNI at 1; BSI at 2; HJS at 5; ISC at 2; IBI II at 1–2; SAMCO at 2; SIFMA at 9; SBC at 2.

[175] *See* BSI at 2.

[176] *See* HJS at 5.

[177] *See* ASA at 5.

[178] *See* ASA at 3–4; AMUNI at 1; Belle Haven at 2–7; BSI at 1; BDA at 3–4; Cambridge at 3–4; CRI at 1; DeRobbio at 1; EH&C at 1–2; Falcon Square at 1; F&A at 1; HCM at 1; HBIS at 1; ICE Bonds at 1; InspereX at 1–2; ISC at 2–3; IPG at 1; IBI I at 1; IBI II at 1–2; KPI at 1; Miner at 1–2; NSI at 1; OSI at 1–2; RBMI at 1; SAMCO at 3–4; Sanderlin *passim;* SIFMA at 4–8, 12–13; SBC at 1–2; TRADEliance at 1–2; Wiley at 1–2; Wintrust at 1; Zia at 1.

[179] *See* SBC at 1; *see also* ASA at 1.

[180] *See* BDA at 3.

[181] *See* NSI at 1.

[182] *See* ISC at 1; NSI at 1.

risk among fewer dealers and give the remaining dealers more power over prices.[183]

Two commenters argued that while small dealers may presently have the technology or personnel to handle trades within 15 minutes, the move to one minute may be beyond the reach of many due to the fact that they likely lack the necessary resources to implement the requisite technological changes and acquire any other necessary resources.[184] One commenter explained that smaller dealers may not just struggle with the upfront costs related to the implementation of technologies necessary to speed up their trade reporting, which it estimated to be upwards of half a million dollars, but would also face ongoing costs associated with third-party reporting systems.[185]

One commenter noted that without the bids placed by small and mid-sized dealers the efficiency of the market and quality of best execution would deteriorate. This commenter noted that the bids made by small and mid-sized dealers contribute to a more dynamic bid-ask process and optimization of prices.[186] Another commenter emphasized the critical role played by smaller, specialized or other subsets of dealers trading particular products and representing historically underserved communities and retail investors.[187] Two commenters stated that the Proposal would have a negative impact on minority-, women- and veteran-owned dealers, which tend to be smaller firms.[188] One of these commenters further stated that many issuers and institutional buyers seek or require that minority-, women- or veteran-owned dealers participate in the municipal securities business they undertake, noting that such dealers' ability to participate in the secondary market is vital to their ability to be relevant to both buy side and borrower clients.[189]

To address these concerns, the MSRB has included in the proposed rule change an exception from the proposed one-minute trade reporting timeframe for dealers with limited trading activity in municipal securities, which would retain the existing 15-minute deadline, as discussed in greater detail herein.[190] Thus, such dealers would not have to comply with a shorter deadline, although they would be subject to the new ''as soon as practicable'' requirement included in the proposed rule change.

Alternatives to One Minute Requirement

One commenter, while expressing support for the MSRB's efforts to provide more timely and informative data to enhance the value of disseminated transaction data and stating that shortening the trade reporting timeframe is an important step in these efforts, cautioned that the industry is not prepared at this time to report all trades in municipal securities within one minute after the Time of Trade. This commenter acknowledged that based on MSRB data all but 2.7 percent of trades are reported by the five-minute mark and therefore the industry is prepared to report most trades within five minutes of execution.[191] Other commenters also suggested that the MSRB should target five minutes as the appropriate shortened timeframe.[192]

Other commenters emphasized that not all types of trades must have the same timeframe for reporting. For example, one commenter noted that the heterogenous nature of the securities that fall within the MSRB's jurisdiction makes a ''one-size-fits-all'' approach (or ''one-minute-fits-all'' approach) inappropriate.[193] A few commenters recommended that, if the MSRB proceeds to shorten the reporting timeframe, trades with a manual component should be excluded from that shortened timeframe and continue to be subject to the current 15-minute timeframe.[194] One commenter suggested exceptions from an accelerated trade reporting timeframe for internal allocations at dually-registered dealers/investment advisers, trades in securities not in a firm's security master, certain reverse inquiries and portfolio trades.[195] Comments regarding existing and specific potential exceptions to the proposed one minute timeframe and the MSRB's responses are discussed below.

The MSRB believes that the proposed rule change would establish appropriate timeframes for the submission of trade reports to RTRS that avoid establishing a one-size-fits-all approach while requiring that all such trades be reported as soon as practicable. While most trades subject to the current 15-minute timeframe would become subject to the new baseline one-minute timeframe, trades with a manual component would, under a phased approach that provides dealers with time to adjust their processes and systems, eventually become subject to a five-minute timeframe through measured steps, and trades by dealers with limited trading activity in municipal securities would remain subject to the existing 15-minute timeframe.

Exceptions to the One Minute Timeframe

Continuation of Current Exceptions

In the 2022 Request for Comment, the MSRB noted that Rule G–14 currently provides exceptions for certain trades to be reported at end of day and requested input on if these exceptions are still necessary and if so, whether end of day is still the appropriate timeframe for reporting these transactions.

The MSRB received two comment letters requesting existing end-of-day trade reporting exceptions to be preserved.[196] One commenter described the complexity of trade reporting for new issue transactions and voiced concern that if the current end-of-day reporting exception for List Offering Price/Takedown Transactions is eliminated, then large transactions with up to 100 syndicate members and thousands of trades would need to be pushed through a firm's systems much faster than in today's environment. This commenter advocated that the MSRB should maintain the other current end-of-day and non-immediate reporting standards and potentially broaden such exemptions if a one-minute trade reporting requirement is instituted.[197] This commenter acknowledged that these trades are required to be reported to ensure completeness for regulatory audit trail purposes but they do not add relevant price information to the marketplace since the prices for these transactions are either known to the market or are off market.[198]

The proposed rule change would preserve all existing end-of-day trade reporting and other non-immediate exceptions without change.

[183] *See* BDA at 3–4.

[184] *See* SIFMA at 12; *see also* Belle Haven at 5.

[185] *See* Belle Haven at 5.

[186] *See* ISC at 2.

[187] *See* SIFMA at 12.

[188] *See* Stern at 1; SIFMA at 12.

[189] *See* Stern at 1.

[190] *See supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Dealers with Limited Trading Activity'' discussing the proposed exception for dealers with limited trading activity.

[191] *See* ICE Bonds at 1.

[192] *See* Bailey at 1; BSI at 2–3; Colwell at 3; TRADEliance at 2.

[193] *See* HJS at 2; *see also* ICI at 10.

[194] *See, e.g.,* BDA at 4; FIF I at 2; HJS at 2.

[195] *See* Wells Fargo at 2, 4.

[196] *See* SIFMA at 17–18; FIF I at 7–8.

[197] *See* SIFMA at 17. In addition to primary market transactions, these exceptions relate to trades in short-term instruments and ''away from market trades'' (including customer repurchase agreement transactions, unit investment trust related transactions, and tender option bond related transactions).

[198] *Id.*

Additional Trade Reporting Exceptions

The 2022 Request for Comment inquired if reducing the reporting timeframe to one minute would require additional trade reporting exceptions, other than end of day exceptions, to allow for certain trades to be reported at a different time (*e.g.,* three minutes). If so, the MSRB requested commenters to identify the types of trades that would require an exception and why such are believed to be necessary.

The MSRB has included two proposed new exceptions to the proposed one-minute reporting timeframe in the proposed rule change to address comments received from commenters regarding other potential trade reporting exceptions that could be included in the Proposal. Commenters also suggested other potential new exceptions from the reporting timeframe, which the MSRB did not include in the proposed rule change. These comments and the MSRB's responses are discussed below.

Proposed New Exception for Dealers With Limited Trading Activity

Several commentors stated that requiring all dealers, regardless of size, to report within one minute of the Time of Trade might harm the market by pricing smaller firms out of the industry.[199] One commenter predicted that the proposed rule change would necessarily require a fully integrated and automated trading system, requiring almost no manual input. This commenter stated that this constituted an unfair burden and would likely lead to fewer small-firm market makers.[200] Commenters identified trade volume or trading activity as a metric that might indicate which firms were likely to be significantly negatively impacted by the proposed rule change.[201]

The MSRB recognizes that, absent any exceptions, dealers that report a smaller number of trades may be more affected if they are required to report trades by no later than one minute after the Time of Trade. As discussed above, the proposed rule change includes an exception for a ''dealer with limited trading activity.'' [202] A dealer with ''limited trading activity'' would be excepted from the one-minute reporting requirement pursuant to new exception described in ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Dealers with Limited Trading Activity'' and would instead be required to report its trades as soon as practicable, but no later than 15 minutes after the Time of Trade for so long as the dealer remains qualified for the limited trading activity exception.

The MSRB believes that this new exception in the proposed rule change would address commenters concerns regarding the potential negative impact on smaller dealers under the Proposal. In effect, dealers with limited trading activity would continue to be subject to the same 15-minute reporting deadline as under the current rule provisions, although they would also be subject to the new overarching obligation to report trades as soon as practicable.

Proposed New Exception for Trades With a Manual Component

As described above, except for two commenters [203] that expressed support, all other commenters expressed the general view that reporting all trades within one minute after the Time of Trade, particularly those having a manual component, is not always possible. One commenter argued that the Proposal, absent an exception from the 15-minute reporting timeframe for manual trades, would severely impair the ability of firms to continue to trade manually and, as a result, could result in less liquidity and wider spreads that could negatively impact investors. The commenter further stated that the lack of such an exception could adversely impact smaller dealers and their customers. This commenter recommended that electronic trade executions would be reportable as soon as practicable and no later than within one minute of the trade time while manual trade executions would continue to be reportable within 15 minutes after the trade time.[204] The commenter noted that this would require adding a field to the RTRS systems for an executing dealer to report whether a trade was executed manually or electronically.[205]

At least two commentors pointed to the need for an exception to address unpredictable technological/operational issues, and one proposed a permanent enforcement exception for trades reported late due to a lag in reporting, outage, or other disruption directly caused by the third-party.[206] One commenter suggested that enforcement actions should consider only the dealer's conduct during the reporting timeframe, and perhaps independently review the conduct of any third-party reporting entities.[207]

The MSRB recognizes that not all trades in municipal securities currently are executed and reported through straight-through processes or other electronic means, and while the proportion of trades executed and reported in that manner appears to be growing over time, it is not likely that certain segments of the marketplace or trades conducted under certain circumstances would migrate to fully electronic processes in the immediate future. The commenters raised many scenarios, described above, where dealers currently would face significant challenges to completing the trade reporting process within one minute following the Time of Trade, and in some cases it might not be possible at all at this time unless significant technology and/or process changes are first undertaken by dealers and the overall industry that could entail considerable costs or cause material impacts to counterparties in transactions with such dealers. The MSRB believes that, depending on the specific facts and circumstances, and based on many of the situations highlighted by commenters where human intervention occurs in the course of reporting a trade to RTRS, such trades could be viewed as a trade with a manual component.[208]

For example, the MSRB acknowledges commenters' views that voice brokerage and negotiated trading continue to be legitimate means of executing fixed income securities transactions that may require the manual entry of data or other human intervention after the Time of Trade to report trade details to RTRS. The MSRB also acknowledges commenters' views that dealers and their customers may have legitimate reasons for preferring to execute larger-sized trades or trades in portfolios of securities manually rather than through electronic execution, and in many cases such manual processes may include steps to address regulatory compliance or risk management issues. In addition, the MSRB acknowledges commenters' descriptions of individual trades that may be part of a more complex set of inter-dependent transactions, such as

[199] *See* OSI at 1; RWS at 2; Wiley at 1.

[200] *See* OSI at 1.

[201] *See* RWS at 2; Wiley at 1.

[202] *See supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Dealers with Limited Trading Activity.''

[203] *See generally* Dimensional; Tuma.

[204] *See* FIF I at 2; *see also* BDA at 4; HJS at 2.

[205] FIF I at 2. The proposed rule change would require that trades with a manual component be reported with a new manual trade indicator, consistent with this comment.

[206] InspereX at 6; ICI at 13–14.

[207] InspereX at 6.

[208] *See supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component'' regarding scenarios where, depending on facts and circumstances, a dealer may consider a trade as a trade having a manual component.

certain mediated transactions undertaken by broker's brokers, transactions among multiple parties (including simultaneous allocations to multiple advisory clients of dually-registered dealers/investment advisers). Furthermore, the MSRB understands that individual trades may require information necessary for reporting that may not be immediately available to the executing dealer, such as in the case of a security that has not been recently traded and therefore may not be included in the dealer's or its clearing firm's security master.[209]

For many trades facing the foregoing and other circumstances, the MSRB realizes that a dealer's trade reporting process might not always be completed within one minute following the Time of Trade, even where the dealer has established efficient reporting processes and commences to report the trade without delay. Accordingly, in response to the commenters' concerns, the MSRB is proposing to adopt a new exception for trades with a manual component. The new exception in Rule G–14 RTRS Procedures and Supplementary Material .02 to Rule G–14 provides an additional year from the effective date of the proposed rule change for firms reporting transactions with a manual component to continue to report their trades by no later than 15 minutes after the Time of Trade. This time would gradually phase down to ten minutes for the subsequent year and five minutes beginning the following year, providing additional transitional time for dealers to plan for and adjust their systems and processes to the new reporting requirements. The MSRB notes that some commenters had suggested that the MSRB establish a baseline five-minute timeframe for trade reporting, rather than the 15-minute timeframe included in the Proposal. Transactions with a manual component would have a trade reporting deadline that matches the proposed eventual five-minute reporting timeframe.[210]

In addition, proposed amendments to Rule G–14 RTRS Procedures Section (a)(iv) would provide that a pattern or practice of late reporting without exceptional circumstances or reasonable justification may be considered a violation of Rule G–14. The determination of whether exceptional circumstances or reasonable justifications exist for late trade reporting is dependent on the particular facts and circumstances. The MSRB has provided guidance regarding scenarios that generally would constitute exceptional circumstances such as incidents that are outside the reasonable control of the dealer or where reasonable justification exists depending on the specific facts and circumstances, and based on many of the situations highlighted by commenters where human intervention occurs in the course of reporting a trade to RTRS.[211]

Potential Incorporation of Certain FINRA Exceptions

A commenter suggested that the MSRB adopt FINRA's approach to not require the reporting of customer repurchase agreement transactions, stating that such transactions do not provide price information with value to market participants.[212] The MSRB notes that such transactions are required to be reported to RTRS with the ''away from market'' indicator, which results in transaction information not being disseminated to the public but is made available to the regulatory authorities charged with enforcing MSRB rules for oversight purposes. The MSRB does not believe that it should reduce the information currently made available for such oversight purposes as part of the proposed rule change and therefore has not made the suggested change.

This commenter also observed that FINRA does not require reporting of list offering price transactions and takedown transactions for TRACE-eligible securities until the next business day and suggested that the MSRB harmonize its current end-of-trade-day reporting requirement for List Offering Price/Takedown Transactions in municipal securities to this FINRA reporting deadline.[213] Relatedly, another commenter suggested that all secondary market trades occurring on the first day of trading of a municipal securities offering be provided with the same end-of-trade day reporting deadline as for List Offering Price/Takedown Transactions.[214]

The MSRB is not aware of any existing issues regarding the reporting of List Offering Price/Takedown Transactions by the end of the trade day and does not believe the market would benefit by delaying the public dissemination of such information until the next day. The MSRB also notes that if secondary market transactions that occur on the first day of trading is at a price that is different from the list offer price and is permitted to be reported on the next business day, all market participants may not have access to the prevailing market price of those secondary market transactions on the date the trade is executed. Such secondary market trades would, in many cases, have prices reflecting then-current market conditions rather than list offering prices that may have been set one or more days prior. Delaying dissemination of such price information would significantly reduce real-time transparency in the municipal securities market precisely on the day on which many securities experience their highest level of trading. Thus, the MSRB has determined not to include these suggested changes in the proposed rule change as they would reduce market transparency.

Other Operational Considerations

Trades Executed When System is Not Open

Two commenters advocated for the continuation of a next-business day 15-minute reporting standard for trades executed when the respective trade reporting system is not open. These commenters supported the continuation of the current MSRB standard for transactions effected with a Time of Trade outside the hours of the RTRS Business Day to be reported no later than 15 minutes after the beginning of the next RTRS Business Day.[215] One trade association commenter noted that the FINRA rules for equity trade reporting and TRACE reporting currently provide a 15-minute reporting period after the facility opens the next business day for trades executed when the reporting facilities are not open.[216] This commenter stated that its members have found the 15-minute period for reporting overnight trades to be important in ensuring that an appropriate review of overnight trades is being performed by U.S.-based staff prior to submission. The commenter also noted that its members are concerned about technical challenges with reporting within one minute after

[209] Once the appropriate indicative data is initially set up in the security master, this issue would abate with respect to such security and the dealer would thereafter be able to report the trade within the required timeframes for subsequent trades absent other manual factors.

[210] Furthermore, since a trade that is reported through the RTRS Web Portal may be considered a trade with a manual component and subject to an exception to the one-minute trade reporting requirement, the MSRB believes that concerns regarding the ability to enter trade reports through this portal are addressed by the proposed exception. Therefore, the MSRB does not believe that additional technological changes to the RTRS Web interface to address this concern are necessary for this proposed rule change.

[211] *See supra* ''Purpose—Proposed Rule Change—Pattern or Practice of Late Trade Reporting'' for a discussion regarding pattern or practice of late reporting.

[212] *See* SIFMA at 18.

[213] *Id.*

[214] *See* FIF I at 9.

[215] *See* FIF I at 7; SIFMA at 18.

[216] *See* FIF I at 7–8.

the opening of a reporting system due to potential connectivity lags, which could in turn mean that connectivity and reporting must occur within one minute at the same time as many other industry members are seeking connectivity to the reporting system. Thus, this commenter expressed support for maintaining a 15-minute reporting requirement for transactions effected with a Time of Trade outside the hours of the RTRS Business Day.

The other commenter argued that given the lapse of time between execution and reopening inherent in a situation where trades are executed when the system is not open, there is no value in changing this deadline. It further stated that even for National Market System stocks and Over the Counter equity securities, which have been subject to a 10-second trade reporting timeframe for many years, trades occurring after normal trading hours are required to be reported within the first 15 minutes after the applicable FINRA equity trade reporting facility re-opens the next trading day.[217]

The MSRB is not proposing a change to the current reporting standard for trades executed when the RTRS system is not open, which will continue to be reportable within 15 minutes after the start of the RTRS Business Day.[218]

More Rapid Dissemination and Masking of Trades

Two commenters expressed concerns about the potentially more rapid dissemination of trade prices that they believed could result in a negative outcome under a one-minute reporting requirement and advocated for the continuation of the practices related to dissemination caps by FINRA or masking of certain trades by the MSRB.[219] One commenter noted that in connection with the Proposal, the MSRB should provide firms the option to report non-disseminated data elements on an end-of-day basis or in some cases, on a next day basis.[220] The other commenter expressed concern that more rapid dissemination of trade data for block trades would raise the risk of significant negative liquidity impacts. The commenter suggested that MSRB action would be needed to address the heightened ability that one-minute dissemination would provide opportunistic market participants to use such data on larger trades to further advantage themselves and reduce the ability of such blocks to achieve favorable levels of liquidity.[221]

The MSRB notes that currently transaction information disseminated from RTRS includes exact par value on all transactions with a par value of $5 million or less but includes an indicator of ''MM+'' in place of the exact par value on transactions where the par value is greater than $5 million. The exact par value of transactions having a par value greater than $5 million is disseminated from RTRS five business days later. The MSRB implemented this approach in response to concerns that, given the prevalence of thinly traded securities in the municipal securities market, it is sometimes possible to identify institutional investors and dealers by the exact par value included on trade reports.[222] While the MSRB would continue to evaluate whether this threshold is appropriate, the MSRB is not proposing a change to its masking practices at this time. The MSRB notes that, based on the comments, many larger trades likely would qualify for the exception for trades with a manual component and therefore would be subject to the measured phased approach to shortening the reporting timeframe to five minutes, thereby giving the market time to adjust to any incremental changes in behavior resulting in the masked trades being made publicly available on a shorter timeframe.

Examination and Enforcement

One commenter noted that FINRA and SEC examination staff should take the opportunity, when they are at their closest interaction with dealer personnel during the examination process, to provide appropriate feedback to firms they believe are not reporting trades as soon as practicable to assist in achieving more fully compliant trade reporting.[223] Another commenter noted that violations for late trade reporting are black and white and that there are no other evidentiary measures necessary in order for a regulator to bring examination or an enforcement action against the late-reporting firm.[224]

As noted in ''Purpose—Proposed Rule Change—Pattern or Practice of Late Trade Reporting,'', the proposed rule change would incorporate pattern or practice language, similar to the existing pattern or practice language included in FINRA's equity trade reporting rules,[225] and has noted that this should be the focus of examining authorities as opposed to individual outlier late trade reports, absent extenuating circumstances.[226] The MSRB already produces a series of report cards accessible to dealers that describe the dealer's transaction reporting data with regard to status, match rate, timeliness of reporting, and the number of changes or corrections to reported trade data. For most statistics, the industry rate is also provided for comparison. The Lateness Breakout portion of the report has a category for each type of reporting deadline, showing how many trades were reported timely and late relative to the applicable deadline. Such reports are available in both single-month and twelve-month formats. The MSRB expects to make certain enhancements to the report cards in connection with the implementation of the proposed rule change if approved.

Phased Implementation

Several commentors advocated for a phased implementation of new requirements, the appropriate assessment of market impacts, and the leveraging of lessons learned and technology or process innovations for use at the next step.[227] One trade association commenter noted that its members also could face challenges with reporting electronic executions within one minute after execution because some trades are transmitted across multiple layers of systems, meaning multiple firm and vendor systems before they are reported, and that some of these firms and reporting vendors would need to implement system and workflow changes to ensure that they can report all electronic executions within one minute.[228]

The MSRB recognizes that sudden and substantial changes to reporting deadlines would require some dealers to make potentially significant changes to

[217] *See* SIFMA at 18.

[218] However, a proposed technical amendment to Rule G–14 RTRS Procedures Section (a)(iii) would clarify and make explicit in the text thereof that inter-dealer trades on an ''invalid RTTM trade date'' are also not required to be reported until 15 minutes after the next RTRS Business Day. This provision currently is set out in Section 4.3.2 of the Specifications for Real-Time Reporting of Municipal Securities Transactions.

[219] *See* FIF I at 4; SIFMA at 6, 17–19.

[220] *See* FIF I at 4.

[221] *See* SIFMA at 19.

[222] *See* Exchange Act Release No. 68081 (Oct. 22, 2012); 77 FR 65433 (Oct. 26, 2012), File No. SR–MSRB–2012–07, available at *https://www.govinfo.gov/content/pkg/FR-2012-10-26/pdf/2012-26340.pdf.*

[223] *See* SIFMA at 22.

[224] *See* InspereX at 4.

[225] *See* FINRA Regulatory Notice 13–19 (May 23, 2013), available at *https://www.finra.org/rules-guidance/notices/13-19.*

[226] *See supra* ''Purpose—Proposed Rule Change—Pattern or Practice of Late Trade Reporting'' for a discussion on pattern or practice of late trade reporting and related expectations for regulatory authorities that enforce and examine dealers for compliance with Rule G–14.

[227] *See* Bailey at 1; ICE Bonds at 2; ICI at 4–7; InspereX at 4; SIFMA at 2–6.

[228] *See* FIF I at 2 and 6. *See also* ASA at 1–2; ICE Bonds at 2.

processes and technology. Therefore, if the proposed rule change is approved by the Commission, the MSRB would announce an effective date (for example, approximately within 18 months from such Commission approval) in a notice published on the MSRB website, and the proposed rule change also includes a phased standard for manual trades to provide dealers time to adjust to the proposed rule change.[229] The MSRB acknowledges the need for maintaining regulatory harmonization between the MSRB with respect to the proposed rule change and FINRA with respect to its similar planned changes to TRACE reporting pursuant to the 2024 FINRA Proposed Rule Change, and the MSRB's effective date for the proposed rule change would be intended to maintain implementation thereof on substantially the same implementation timeframe as the 2024 FINRA Proposed Rule Change.

Potential Benefits, Costs and Burdens

Benefits

The 2022 Request for Comment sought to understand the benefits to investors, dealers, municipal advisors, issuers and other market participants (*i.e.,* yield curve providers, evaluated pricing services etc.) and if those benefits would be different for institutional investors than individual investors, whether the benefits would differ among dealers and if the benefits to dealers differ from benefits to investors.

Two commenters strongly supported the Proposal to amend Rule G–14 to require that transactions be reported as soon as practicable, but no later than within one minute of the time of trade.[230] One commenter agreed with the MSRB that the municipal securities market historically has been considered less liquid and more opaque than other securities markets, consequently making post-trade data the most important source of information for market participants. This commenter believed that the proposed shortening of the reporting timeframe would enhance transparency and reduce information asymmetries in the municipal securities market. It asserted that the enhanced transparency also enhances investors' power to negotiate with dealers, leading to reduced transaction costs.[231] The other commenter noted the importance of being able to see all sides of the trades in a particular bond—purchase from customer, inter-dealer, and sale to customer—as soon as possible to accurately evaluate bonds.[232]

One commenter noted that the Proposal's stated benefits are improved transparency, price relevance, and immediate impact on market direction, which are relevant to large block trades, large issue sizes and ubiquitously viewed credits. This commenter further noted that these ''relevant'' trades can be market leading, telling, and important for comparison.[233]

Some commenters expressed concern that the Proposal would disproportionately benefit certain segments of the market such as algorithmic trading entities and other market participants positioned to take advantage of information arbitrage,[234] large wire house firms and the vendors [235] who provide automated reporting services and applications at the expense of others including retail and traditional institutional investors, while others believe the market is operating as intended and further changes are not necessary.[236]

Costs and Burdens

The 2022 Request for Comment sought to understand if a one-minute trade reporting requirement would have any undue compliance burdens on dealers with certain characteristics or business models and if so, requested suggestions on how to alleviate the undue burdens. The 2022 Request for Comment also requested input on the likely direct and indirect costs associated with the one-minute requirement and who might be affected by these costs and in what way. The MSRB asked for data on these costs and if firms would have to make system changes to meet a new timeframe for trade reporting, how long would firms need to implement such changes.

Regarding these questions, the majority of commenters in turn questioned whether the potential benefits of a one-minute reporting requirement for all fixed income trades, absent appropriate exceptions, outweighed the costs to market participants and the impact to the fixed-income market structure.[237]

These concerns appear to primarily stem from concerns regarding the potential impact on certain types of trades requiring additional time to report. Examples include trades executed by dealers that utilize a third-party clearing firm, situations where trade reporting occurs further downstream or involves multiple layers and trades that involve manual steps in the negotiation, execution and reporting process; on large-sized trades including voice and negotiated trades and the corresponding impact on best execution obligations; and on dealers that report a small number of trades.[238] Commenters generally agreed that certain types of transactions may be reported successfully with a one-minute reporting requirement, depending on the level of automation.[239]

One trade association commenter stated some of its members were concerned that shortening the reporting timeframe might most benefit algorithmic trading firms or other market participants positioned to take advantage of information arbitrage to the potential detriment of retail investors and more traditional institutional investors.[240] This commenter further noted that the retail market therefore is unlikely to observe a positive liquidity effect from automated trading methodologies that could leverage the immediacy of trade data under the Proposal.

One commenter asserted that the size of a dealer's market share should not dictate whether the burdens such dealer bears are acceptable or not and stated that a failure to engage in a fulsome cost-benefit analysis that incorporates the needs and barriers such dealers face would be inconsistent with recent initiatives undertaken by regulators in support of small enterprises.[241]

Many commenters described how the potential issues they identified might lead to a broader negative impact by way of, for example, increased compliance costs that may force many firms out of the industry, thereby reducing competition, liquidity, and market accessibility for certain types of issuers and investors.[242] One

[229] *See* discussion *supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement—Exception for Trades with a Manual Component'' and ''Purpose—Effective Date and Implementation.''

[230] *See* Dimensional at 1; Tuma at 1.

[231] *See* Dimensional at 1.

[232] *See* Tuma at 1.

[233] *See* NSI at 1.

[234] *See* SIFMA at 3, 13; *see also* Colwell at 1.

[235] *See* ISC at 1.

[236] *See* NSI at 1.

[237] *See* ASA at 3–4; AMUNI at 1; Belle Haven at 2–7; BSI at 1; BDA at 3–4; Cambridge at 3–4; CRI at 1; DeRobbio at 1; EH&C at 1–2; Falcon Square at 1; F&A at 1; HC at 1; HBIS at 1; ICE Bonds at 1; InspereX at 1–2; ISC at 2–3; IPG at 1; IBI I at 1; IBI II at 1–2; KPI at 1; Miner at 1–2; NSI at 1; OSI at 1–2; RBMI at 1; SAMCO at 3–4; Sanderlin *passim;* Sheedy at 1; SIFMA at 4–8, 12–13; SBC at 1–2; TRADEliance at 1–2; Wiley at 1–2; Wintrust at 1; Zia at 1.

[238] *See supra* ''One Minute Timeframe for Reporting—Operational Issues Relating to Reporting Within One Minute—Manual Steps in the Negotiation, Execution and Reporting Process'' generally.

[239] *See* Bailey at 4; Oberweis at 1; SIFMA at 21.

[240] *See* SIFMA at 13.

[241] *See* Stern at 1.

[242] *See* BSI at 4; BDA at 4–5; BB at 2; C&C at 1; Falcon Square at 2–3; HJS 3–5; Honey Badger at 1;

commenter stated that the Proposal would have an unreasonable impact on smaller dealers, which likely lack the technological systems available to large firms, and to the extent the small firms exit the market or limit trading in response to new or amended regulation, issuers and investors suffer.[243] This commenter further stated that, to the extent that the Proposal makes participating in the market more difficult and costly for regulated entities, it would negatively impact local governments.[244]

Some commenters asserted that the Proposal appears to make fixed income markets operate more like the equity markets although they are different.[245] One commenter observed that there are innate differences between the municipal marketplace and the equity marketplace,[246] and another commenter noted that equity securities can trade thousands of shares in seconds, making the need for price transparency in an extremely short period of time a necessity but that, in contrast, municipal securities rarely trade twice in the same day or multiple times in one, five or 15 minutes.[247] Both commenters questioned whether municipal securities would benefit from the shortening of the reporting timeframe to one minute, in contrast to the equity markets, noting the lack of cost-effective technology solutions for municipal securities and the likely prohibitive costs of the Proposal, particularly to small and medium-sized dealers.[248] Another commenter noted that there are some 70,000 different issuers of municipal securities unlike the less than 5,000 equity issuers and that the market is not there yet technologically to do one-minute trading.[249]

The MSRB believes that it has engaged in a fulsome cost-benefit analysis that incorporates the needs and barriers dealers would face upon implementation of the proposed rule change, as described in ''Self-Regulatory Organization's Statement on Burden on Competition'' above. Specifically, the MSRB recognizes that meeting the new one-minute transaction reporting requirement under Rule G–14 RTRS Procedures may result in additional costs for certain dealers. Additionally, the MSRB understands that the trade reporting process for certain types of trades, including trades with a manual component, may take longer to report than a trade for which an automated execution and reporting system was used.

The MSRB has taken into consideration the various operational considerations raised by commenters and identified through subsequent outreach. As a result of this industry input, the proposed rule change introduces two new exceptions to address the concerns related to the balance of costs and benefits and to alleviate potential compliance burdens: (1) an exception for firms with limited trading activity, and (2) an exception for transactions with a manual component, which includes a phased approach to an eventual five-minute reporting requirement.[250] The two exceptions created by the proposed rule change are designed to reduce potential costs and compliance burdens to less active dealers and on certain transactions that are most likely to realize a negative impact by shortening of the timeframe,[251] and these proposed exceptions were taken into consideration in the MSRB's economic analysis included in ''Self-Regulatory Organization's Statement on Burden on Competition'' above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2024–01 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MSRB–2024–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2024–01 and should be submitted on or before February 16, 2024.

For the Commission, pursuant to delegated authority.[252]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01394 Filed 1–25–24; 8:45 am]

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ISC at 3; ICI at 4; IBI II at 1–2; Miner at 1; NSI at 1; OSI at 1–2; RBMI at 1; SAMCO at 3–4; Wiley at 1–2.

[243] *See* F&A.

[244] *Id.*

[245] *See* ISC at 3; NSI at 1. *See also* SIFMA at 5.

[246] *See* NSI at 1.

[247] *See* ISC at 3.

[248] *See id.;* NSI at 1.

[249] *See* Bailey at 1.

[250] For a detailed discussion of the two exceptions created by the proposed rule change, *see supra* ''Purpose—Proposed Rule Change—Exceptions to the Baseline Reporting Requirement.''

[251] These two exceptions should provide considerable relief from potentially higher compliance costs for smaller dealers that may in many cases constitute dealers with limited trading activity and may primarily engage in transactions with a manual component, thereby potentially qualifying for both exceptions.

[252] 17 CFR 200.30–3(a)(12).

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Part IV

The President

Memorandum of December 27, 2023—Delegation of Authority Under Section 614(a)(1) of the Foreign Assistance Act of 1961

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Presidential Documents

Title 3—

The President

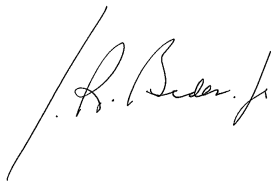
Memorandum of December 27, 2023

Delegation of Authority Under Section 614(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to $20 million in assistance to Ukraine without regard to any provision of law within the purview of section 614(a)(1) of the FAA.

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



THE WHITE HOUSE,
Washington, December 27, 2023

[FR Doc. 2024–01755
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